

C5. CHAPTER 5

FOREIGN MILITARY SALES CASE DEVELOPMENT

C5.1. LETTER OF REQUEST SUBMISSIONS

C5.1.1. General. The Foreign Military Sales (FMS) process begins when an eligible foreign country or international organization requests information on defense articles or services being considered for purchase. All requests, generally referred to as Letters of Request (LORs), whether provided through formal correspondence, requests for proposal (RFPs), or via discussions, electronic mail (e-mail), letters, or messages, must be answered consistent with the legal provisions under which the FMS program operates. All requests for information require the same channels of submission (see paragraph C5.1.3.).

C5.1.2. LOR Format. Although no specific format is required for an LOR, the purchaser shall ensure that the request is complete. The LOR shall identify the desired defense articles and/or services in sufficient detail for the United States Government (USG) to prepare an accurate cost estimate. The request shall include the proposed method of financing. The LOR should indicate whether Price and Availability (P&A) data, a Letter of Offer and Acceptance (LOA), a Letter of Intent (LOI), an LOA Amendment, or an LOA Modification is desired. Requests for blanket order LOAs must include the desired materiel and services value or the desired total case value. The LOR must contain the name and address of the originator and a traceable reference number (e.g., letter serial number). If the request is received verbally, a memorandum for record (MFR) must document the conversation and outline the required information. If the request is received during a meeting or conference, the minutes should specify the action requested and be signed by an appropriate purchaser representative. LORs transmitted by United States (U.S.) Embassies or Security Assistance Organizations (SAOs) should refer to the country letter or message requesting the data.

C5.1.3. LOR Submission Procedures

C5.1.3.1. Significant Military Equipment (SME) Requests. SME requests that originate in-country are addressed to the cognizant Department of Defense (DoD) Component with information copies to the DoS (Bureau of Political-Military Affairs) (DoS (PM)), the Defense Security Cooperation Agency (DSCA) (Operations Directorate), and the Combatant Command. Requests regarding SME that originate with purchaser representatives in the United States are also addressed to the cognizant DoD Component with information copies to DoS (PM) and DSCA (Operations Directorate). If it appears that the DoS (PM) and DSCA (Operations Directorate) are not on distribution for a purchaser's request, the DoD Component must furnish copies to these organizations as quickly as possible. For Major Defense Equipment (MDE) items, the DoD Component provides the applicable Combatant Command and SAO with a copy or details of the purchaser's request, as appropriate. The U.S. Embassy or SAO must provide the information in Table C5.T1., commonly referred to as the "country team assessment," in the request transmission.

Table C5.T1. Country Team Assessment - Required Information

| Country Team Assessment - Required Information | |
|--|---|
| 1 | Reason the purchaser desires the articles or services. |
| 2 | How the articles or services would affect the recipient's force structure. |
| 3 | How the articles or services would contribute to both the U.S. and the recipient's defense/security goals. |
| 4 | Justification for the type and quantity of articles or services requested. |
| 5 | Combatant Commander's concurrence to the introduction of a new warfighting capability to the nation or region. Combatant Commander's assessment can be provided separately. |
| 6 | Anticipated reactions of neighboring nations. |
| 7 | Assessment of the nation's ability to account for, safeguard, operate, maintain, and support the articles. |
| 8 | Training required either in-country or in the United States and anticipated reactions resulting from the presence of U.S. trainers in-country. |
| 9 | Possible impact of any in-country U.S. presence that might be required as a result of providing the article. |
| 10 | Source of financing and the economic impact of the proposed acquisition. |
| 11 | Human rights considerations relevant to the proposed acquisition. |
| 12 | A plan for end-use monitoring for sensitive and advanced warfighting technology and the SAO's plan for compliance verification. |
| 13 | Recommendation whether the USG should approve transfer of the article and justification. |
| 14 | <p>If the request is for Night Vision Devices (NVDs), the following information must be provided:</p> <p>Justification for the type and quantity of NVDs requested (LOR development may require coordination with MILDEP for recommended model/quantity).</p> <p>The operational plan for use and specific end-users to include:</p> <p>Description of the primary mission for the units to receive the NVDs</p> <p>Extent of military interoperability missions/training with U.S. Forces</p> <p>Extent of anti-terrorist missions for the units to receive the NVDs</p> <p>Assessment of the purchaser's capacity to afford substantially the same degree of security and accountability protection as given by the United States and willingness to accept the NVD physical security and accountability note contained in Table C5.T5.</p> <p>The SAO plan for EUM and compliance verification.</p> <p>Additional information in support of the transfer request (e.g., status of previous NVD transfers and results of past U.S. security inspections/inventories).</p> |

C5.1.3.2. Non-Significant Military Equipment Requests. Non-SME requests that originate in-country are transmitted either by the purchaser's authorized representative or the DoD element of the U.S. country team to the appropriate DoD Component with information copies to the Combatant Command and DSCA (Operations Directorate). Requests originated by foreign representatives of the purchaser in the United States, are sent to the appropriate DoD Component with information copies to DSCA (Operations Directorate). If it appears that the DSCA (Operations Directorate) is not on distribution for a purchaser's request, the DoD Component must furnish copies to DSCA as quickly as possible.

C5.1.3.3. LORs Submitted by Electronic Mail. To send LORs via electronic means, purchasers must provide a list of authorized signers and senders to the Implementing Agency. LORs submitted using electronic means must be submitted through appropriate channels required in subparagraphs C5.1.3.1. and C5.1.3.2. Purchasers who wish to submit LORs electronically should contact the U.S. Implementing Agency to determine if a file naming convention should be used. Information copies of electronic LORs for DoS (PM) should be sent to: <mailto:pm-rsat-lor@t.state.gov>. To submit electronic information copies of LORs to the DSCA (Operations Directorate), purchasers should contact their DSCA Country Program Director (CPD) for the individual e-mail addresses.

C5.1.3.4. The DoD Components Authorized to Receive LORs. Certain USG organizations (Implementing Agencies) are authorized to receive and respond to LORs. Table C5.T2. identifies these agencies and their addresses.

Table C5.T2. Implementing Agencies Authorized to Receive Letters of Request (LORs)

| Implementing Agency | | Purpose | Address |
|---------------------|------|--|---|
| Name | Code | | |
| Army | B | Action Address for LORs other than those for Training and Construction | Department of the Army U.S. Army Security Assistance Command 5701 21 st Street Ft. Belvoir VA 22060-5940 |
| | | Messages for LORs other than those for Training and Construction | CDR USASAC Alexandria VA//AMSAC// |
| | | Action Address for LORs for Training | Security Assistance Training Field Activity (SATFA) HQ TRADOC SATFA 173 Bernard Road, Building 139 Fort Monroe VA 23651-1003 |
| | | Messages for LORs for Training | DIR SATFA FT MONROE//VA// |
| | | E-Mail Address for LORs for Training | atfar@monroe.army.mil |
| | | Action Address for LORs for Construction | U.S. Army Corps of Engineers HQUSACE 441 G Street NW ATTN: CEMP-M Washington DC 20314-1000 |
| | | Messages for LORs for Construction | CDRUSACE WASHINGTON DC\\CEMP-M\\ |
| | | E-Mail Address for LORs for Construction | Contact individual USASAC point of contact (POC) for e-mail address. |
| | | Information Address for all LORs | Department of the Army Deputy Assistant Secretary of the Army for Defense Exports and Cooperation ATTN: SAAL-NP 1777 North Kent Street, Suite 8200 Arlington VA 22209 |
| | | Message Information Address for all LORs | DA WASHINGTON DC//SAAL-NP// |
| Navy | P | Action Address for all LORs | Department of the Navy Navy International Programs Office ATTN: 02C1 2521 South Clark Street, Suite 800 Arlington, VA 22202-3928 |
| | | Messages for all LORs | NAVY IPO WASHINGTON DC |
| | | E-Mail Address for all electronic LORs | Contact individual Navy IPO POC for e-mail address. |
| Air Force | D | Action Address for LORs for Communications, Electronics, Aircraft, and Missile Systems | SAF/IAR 1080 Air Force Washington DC 20330-1080 |

| Implementing Agency | | Purpose | Address |
|---|------|---|--|
| Name | Code | | |
| | | Message Address for LORs for Communications, Electronics, Aircraft, and Missile Systems | OSAF WASHINGTON DC//IA//IAPX// |
| | | E-Mail Address for electronic LORs for Communications, Electronics, Aircraft, and Missile Systems | Europe/NATO/Eurasia Division: SAF/IARE Workflow@pentagon.af.mil Americas Division: SAF/IARL Workflow@pentagon.af.mil Mid-East/Africa Division: SAF/IARM Workflow@pentagon.af.mil Pacific Division: SAF/IARP Workflow@pentagon.af.mil Saudi Division: SAF/IARS Workflow@pentagon.af.mil Policy Division: SAF/IAPX Workflow@pentagon.af.mil |
| | | Action Address for LORs for Follow-On Support | AFSAC/GB 1822 Van Patton Drive Wright-Patterson AFB OH 45433-5337 |
| | | Message Address for LORs for Follow-On Support | AFSAC WRIGHT PATTERSON AFB OH//CC//GB// |
| | | E-Mail Address for electronic LORs for Follow-On Support | afsac.lor@wpafb.af.mil |
| | | Action Address for LORs for Training | AFSAT/CCX 315 J Street West Randolph AFB TX 78150-4354 |
| | | Message Address for LORs for Training | AFSAT RANDOLPH AFB TX//TSS/ |
| | | E-mail Address for electronic LORs for Training | AFSATLOR@randolph.af.mil |
| DCMA Defense Contract Management Agency | F | Action Address for LORs for Contract Administration Services (CAS) | Defense Contract Management Agency Attn: DCMA-FBFR 6350 Walker Lane Suite 300 Alexandria VA 22310 |
| | | Message Address for LORs for CAS | DCMA ALEXANDRIA VA//FBFR |
| | | E-Mail Address for electronic LORs for CAS | dodccp@dcma.mil |
| DISA Defense Information Systems Agency | C | Action Address for applicable LORs | Defense Information Systems Agency Attn: IN32 5600 Colombia Pike Falls Church VA 22041-2717 |
| DLA Defense Logistics Agency | R | Action Address for LORs for Excess Property | Defense Reutilization and Marketing Service 74 N. Washington Street Federal Center Attn: DRMS-DPDS Battle Creek MI 49016-3412 |
| | | Message Address for LORs for Excess Property | DRMS BATTLE CREEK MI//DRMS// |
| | | Action Address for LORs for Cataloging Services | Defense Logistics Information Service 74 N. Washington Street Attn: DLIS-KI Battle Creek MI 49016-3412 |

| Implementing Agency | | Purpose | Address |
|--|------|--|---|
| Name | Code | | |
| | | Message Address for LORs for Cataloging Services | DLIS BATTLE CREEK MI//DLIS/KI// |
| DSCA Defense Security Cooperation Agency | Q | Information Address for all LORs | Defense Security Cooperation Agency Attn: [insert applicable Operations Directorate] 201 12 th Street South, Suite 203 Arlington VA 22202 |
| | | Message Address for information copies of all LORs | SECDEF//USDP:DSCA//[insert applicable Operations Division] |
| | | E-Mail Address for information copies of electronic LORs | Contact individual DSCA CPD for e-mail address |
| DTRA Defense Threat Reduction Agency | Z | Action Address for all applicable LORs | Defense Threat Reduction Agency (DTRA) Attn: RMBP 8725 John J. Kingman Road MSC 6201 Fort Belvoir VA 22060-6201 |
| NGA National Geospatial-Intelligence Agency | U | Action Address for all applicable LORs | National Geospatial-Intelligence Agency Office of International and Policy Mail Stop D-120 4600 Sangamore Road Bethesda MD 20816-5003 |
| NSA National Security Agency | M | Action Address for all applicable LORs | National Security Agency 9800 Savage Road Suite 6576 Ft Meade MD 20755-6576 |

C5.1.3.5. Exceptions. LORs may be submitted directly to DoS (PM) and DSCA if:

C5.1.3.5.1. The U.S. Embassy in-country or the purchaser's representative in the United States believes the request is sensitive and requires a higher level policy determination; or

C5.1.3.5.2. The purchaser or the SAO and/or U.S. Embassy cannot determine the appropriate DoD Component.

C5.1.4. LOR Validation

C5.1.4.1. Purchaser Eligibility. The Implementing Agency must validate the LOR to ensure the potential purchaser is an eligible FMS recipient (see Chapter 4, section C4.2.), that the item sought may be sold (see Chapter 4, section C4.3.), and that the request was received through proper channels (see paragraph C5.1.3.). The Implementing Agency also checks to see if any sanctions exist that would prevent an LOA from being prepared and/or offered to this purchaser. See Chapter 6, section C6.6. for more information on sanctions. Once validated, the Implementing Agency enters the LOR data as a Customer Request in the Defense Security Assistance Management System (DSAMS).

C5.1.4.2. LOR Evaluation. U.S. Embassies, SAOs, and the DoD Components use Table C5.T3. to evaluate LORs. If an LOR does not meet the requirements, the DoD Component initially receiving the request notifies the requestor of the deficiency and, after entering the request in DSAMS, holds any further action until all required information is received.

Table C5.T3. Letter of Request (LOR) Check List - Evaluation Criteria

| LOR Check List - Evaluation Criteria | |
|--------------------------------------|--|
| 1 | Is the request a valid military requirement? |
| 2 | Is the request for an FMS case (LOR for an LOA implies the country has identified a source of funding) or is it a request for P&A data? |
| 3 | Does the requestor have the authority to submit procurement requests for the Ministry of Defense (MOD) of the foreign Government? |
| 4 | Is the request specific enough, in your judgement, to enable a contracting officer to obtain pricing data? If "No," consult with the country to obtain sufficiently detailed data similar to that prepared for a request for quotation. If the country cannot provide additional definition, advise that they should request a Requirements Survey Team or Definition Conference with U.S. experts to help define the requirements. The purchaser must fund these expert teams on a separate FMS case. |
| 5 | Ensure the LOR contains the following items (as appropriate): Are all hardware requirements specified, including National Stock Numbers (NSNs)? Are all country unique support and training requirements identified? Does the requirement provide a realistic operational capability and is the country utilizing the Total Package approach, to include concurrent spares, training, ammunition, and follow-on support? Has an adequate source of funding been identified? If so, what type? Does overseas Contract Administration Services (CAS) surcharge apply? |
| 6 | Has the country been in negotiation directly with a company to obtain the item on a direct commercial basis? If "Yes," the USG cannot provide any information until the country advises the USG in writing that they have terminated commercial negotiations. It is USG policy that sales via Government-to-Government FMS channels shall not compete with direct commercial sales. |
| 7 | Is a country team assessment required? See Table C5.T1. |
| 8 | Submit all requests to the appropriate Implementing Agency with copies to DSCA (Operations Directorate) and DoS (PM). |

C5.1.4.3. LORs Requiring Unique Review

C5.1.4.3.1. Pre-Operational Test and Evaluation (OT&E) Sales Policy (Yockey Waiver). Before responding to LORs for MDE items that have not completed OT&E, the Implementing Agency submits a request to DSCA (Programs Directorate/Weapons Division) for the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) concurrence. This request may be for multiple countries. LOA or P&A data for such items is not released prior to DSCA and USD(AT&L) approval. If approved for release, a note (see Table C5.T5.) is included in the P&A data correspondence or on the LOA.

C5.1.4.3.2. Integration of Non-U.S. Subsystems. The Implementing Agency reviews requests for integration or certification services for installation of non-U.S. subsystems and coordinates with DSCA (Programs Directorate/Weapons Division) prior to development of P&A data or an LOA.

C5.1.4.3.3. LORs for Night Vision Devices (NVDs). Every request for NVDs (paragraph C4.3.14.) requires either an LOR Advisory or a request for exception to DoD NVD policy. After validating the LOR in accordance with subparagraphs C5.1.4.1. and C5.1.4.2., the Implementing Agency forwards the NVD LOR to DSCA (Operations Directorate) along with the Country Team Assessment, the Military Department's concurrence, the list of specific NVDs to be transferred (including model-type/nomenclature and quantity). DSCA (Programs Directorate /Weapons Division) determines whether an LOR Advisory (subparagraph C5.1.4.5.) or an Exception to DoD NVD Policy request (subparagraph C5.1.4.6.) is required.

C5.1.4.3.4. LORs for Medical Countermeasures. The Implementing Agency forwards a copy of requests for medical countermeasures to DSCA (Operations Directorate and Strategy Directorate). DSCA (Strategy Directorate) staffs the request with the Office of the Secretary of Defense (OSD). Based on OSD's direction, DSCA advises the Implementing Agency on how to respond to the purchaser's LOR. If the decision is to prepare an LOA, the Implementing Agency develops and submits the LOA to DSCA for countersignature. Medical countermeasure LOAs are not eligible for Automated State Department Approval. DSCA forwards the LOA to OSD for further staffing and approval as appropriate. If approved, DSCA countersigns the LOA. If disapproved, DSCA provides the Implementing Agency with instructions on how to respond to the purchaser.

C5.1.4.3.5. LORs for Defense Articles and Services Containing Geospatial Intelligence (GEOINT). If an Implementing Agency, other than NGA, receives an LOR for defense articles and/or services requiring GEOINT, the Implementing Agency must coordinate the request with the NGA (Office of International Affairs and Policy) to determine if, and by what means, the GEOINT data requirements may be supported. This coordination must take place prior to responding to an LOR or preparing an LOA to ensure that GEOINT-sharing is considered and resolved as part of the releasability process, and is in consonance with the Combatant Commander's security assistance and armaments cooperation responsibilities. Any Country Team Assessments (CTA) (see C5.1.3.1. for when a CTA is required and Table C5.T1. for the information required in a CTA) must address not only the defense articles and services being transferred, but also the plans for sharing, use, and protection of the required GEOINT data in the recipient country.

C5.1.4.4. DSCA and DoS LOR Review. Within 5 working days after receiving the information copy of the LOR, DSCA and/or the DoS may initiate coordination to approve or disapprove the request, or advise the Implementing Agency to suspend further correspondence until coordination is complete. If the request is disapproved, DSCA formally advises the Implementing Agency to stop processing the purchaser's request, provides the rationale for the decision, and issues guidance concerning further actions.

C5.1.4.5. LOR Advisories

C5.1.4.5.1. LOR Advisory Criteria. An LOR Advisory notifies USD(AT&L) and the Chairman of the Joint Chiefs of Staff that DSCA has received an LOR for items or services that meet one of the following criteria:

C5.1.4.5.1.1. First introduction of Major Defense Equipment (MDE).

C5.1.4.5.1.2. MDE that is expected to result in a Congressional Notification under Arms Export Control Act (AECA), section 36(b) (reference (c)).

C5.1.4.5.1.3. Coproduction or licensing agreements for MDE.

C5.1.4.5.1.4. Items and/or services of a sensitive nature. For example, NVDs or items or services associated with missile defense are considered items and/or services of a sensitive nature.

C5.1.4.5.1.5. MDE that has not yet completed OT&E. DSCA may not be aware that the requested item(s) has not satisfactorily completed OT&E until the Implementing Agency refers the LOR to DSCA.

C5.1.4.5.2. Preparing LOR Advisories. DSCA (Operations Directorate) prepares and sends an LOR Advisory to the Chairman of the Joint Chiefs of Staff and USD(AT&L) using the format in Figure C5.F1a. The LOR Advisory should include a copy of the purchaser's request as well as the Country Team Assessment (when required). The Implementing Agency's concurrence is included along with the proposed list of items to be transferred (including model-type/nomenclature and quantity). The Defense Technology Security Administration (DTSA) is added as an addressee for all NVD LOR Advisories. The Missile Defense Agency (MDA) is added as an addressee for all missile defense related LOR Advisories.

C5.1.4.5.3. Coordinating LOR Advisories. To ensure consistency with existing Theater Security Cooperation objectives and technology security policy, DSCA sends the LOR Advisory as soon as possible after receiving the LOR with all required attachments. The recipients identified in C5.1.4.5.2. have 10 working days from the date of the LOR Advisory to provide comments to DSCA for consideration. In the event of non-concurrence, disagreements are adjudicated. The LOR Advisory does not take the place of any Exception to National Disclosure Policy (ENDP) processes or releasability requirements that are worked by the MILDEPs.

C5.1.4.6. Requests for Exception to DoD NVD Policy. If an exception to DoD NVD Policy is required, DSCA (Operations Directorate) prepares and sends a memorandum requesting the exception to the Deputy Under Secretary of Defense for Technology Security Policy and Counterproliferation (DUSD(TSP&CP)) through the same addressees in place of an LOR Advisory using the format in Figure C5.F1b. DTSA coordinates the proposed conditions and restrictions of the transfer with the Chairman of the Joint Chiefs of Staff. After coordination, the DUSD(TSP&CP) sends a memorandum to DSCA authorizing or denying the transfer.

C5.1.4.6.1. When the DUSD(TSP&CP) authorizes the transfer, DSCA (Operations Directorate) sends a memorandum to the Implementing Agency, Combatant Command, and SAO (as appropriate), which communicates the decision and includes all required notes, technical provisos, and DoD End-Use Monitoring (EUM) requirements. The organizations specifically tasked with EUM responsibilities shall acknowledge their assigned EUM duties by return memorandum.

C5.1.4.6.2. Should the DUSD(TSP&CP) deny the transfer, DSCA will disapprove the customer's LOR in accordance with paragraph C5.2.2.

Figure C5.F1a. Letter of Request (LOR) Advisory Format

MEMORANDUM FOR DIRECTOR, J-5, JOINT CHIEFS OF STAFF

ATTN: JS/J5/INMA-CAC

OFFICE OF THE UNDER SECRETARY OF DEFENSE

ACQUISITION, TECHNOLOGY, AND LOGISTICS

ATTN: INTERNATIONAL COOPERATION

Add for NVD OR Advisories

DEFENSE TECHNOLOGY SECURITY ADMINISTRATION

ATTN: DTSA/PD (POLICY DIVISION)

MISSILE DEFENSE AGENCY

Add for missile defense related LOR Advisories

SUBJECT: Letter of Request (LOR) Advisory - [Insert Country or International Organization Name]

DSCA has received a request from [insert Country or International Organization Name] for [identify articles requested and whether they are Major Defense Equipment (MDE) that is being introduced for the first time; MDE that is expected to result in a notification to Congress under AECA, section 36(b); involve coproduction or licensing agreements for MDE; items/services of a sensitive nature; or MDE that has not yet completed operational testing and evaluation (OT&E)]. (Additional information may be provided specific to this request if desired.)

The purpose of this memorandum is to advise you of this request and provide you with a copy for your use and information. If you have any questions or desire additional information regarding this potential sale, please contact [insert name, office symbol, phone number, and e-mail address of DSCA Country Program Director].

It should be noted that this notification does not take the place of any Exception to National Disclosure Policy (ENDP) processes or releasability requirements that may need to be addressed by the Military Departments.

For NVD LOR Advisories add the following:

The Department of the [insert MILDEP] recommends and is prepared to offer the transfer of the following devices with capabilities that are equal to current DoD standard issue and considered to be of a sensitive nature: [insert type and quantity of specific devices to be offered]. The [insert Purchaser] has indicated its willingness to accept the physical security and accountability requirements as attached, which will become part of any Letter of Offer and Acceptance for these items. [Insert Purchaser's] letter of request and [Implementing Agency] memorandums are also enclosed.

Attachment

[Insert Purchaser Request Information]

[Appropriate MILDEP Recommendation]

[Proposed Physical Security & Accountability Note]

Add for NVD LOR Advisories

cc: [Insert Applicable ASD(ISA or ISP)]

USD(P)-PS

DoS (PM/RSAT)

[Insert Applicable SAO]

[Insert Applicable MILDEP]

[Insert Applicable Combatant Command]

DTSA/PD

USSOCOM/SOOP/SDO

Add for NVD LOR Advisories

NOTE: Memorandum is classified if applicable.

Figure C5.F1b. Sample Request for Exception to DoD NVD Policy

| | |
|---|--|
| (CLASSIFICATION) | |
| MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE FOR TECHNOLOGY SECURITY POLICY AND COUNTERPROLIFERATION | |
| THROUGH | DEFENSE TECHNOLOGY SECURITY ADMINISTRATION ATTN: DTSA/PD (TECHNOLOGY SECURITY POLICY) DIRECTOR, J-5, JOINT CHIEFS OF STAFF ATTN: JS/J5/INMA-CAC OFFICE OF THE UNDER SECRETARY OF DEFENSE ACQUISITION, TECHNOLOGY AND LOGISTICS ATTN: INTERNATIONAL COOPERATION |
| SUBJECT: Government of [Insert Purchaser]'s Request for Night Vision Devices [Insert Case Designator] | |
| <p>DSCA has received a request from [insert Purchaser] for Night Vision Devices (NVDs). The Department of the [insert MILDEP] recommends and is prepared to offer the transfer of the following devices with capabilities that are [state-of-the-art; equal to current DoD standard issue; less than DoD standard issue but greater than commercial off-the-shelf], and considered to be of a sensitive nature: [insert type and quantity of specific devices to be offered].</p> <p>[Briefly describe the reason the purchaser requires the devices as well as the operational plan for use to include justification for quantity requested. Additional information, such as the status of past NVD transfers and previous inspections may be provided if desired.]</p> <p>The [insert Purchaser] has indicated its willingness to accept the physical security and accountability requirements as attached, which will become part of any letter of offer and acceptance for these items. [Insert Purchaser's] letter of request, the U.S. Country Team Assessment with supporting justification, and the [insert Combatant Command] and [insert Implementing Agency] endorsement memorandums are also enclosed.</p> <p>Request your authorization to offer the devices to [insert Purchaser] under a government-to-government agreement (Foreign Military Sales case). The DSCA POC for this action is [insert CPD name and contact information]. The DSCA POC for NVD policy is [insert DSCA (Programs/Weapons Division) name and contact information].</p> | |
| Director [Operations Directorate] | |
| Attachments: [Purchaser Letter of Request Information] [Country Team Assessment and Supporting Justification] [Appropriate Combatant Command Recommendation (when applicable)] [Appropriate MILDEP Recommendation] [Proposed Physical Security & Accountability Note] | |
| cc: [Applicable ASD (ISA or ISP)] USD(P)-PS DTSA/PD DoS (PM/RSAT) [Applicable SAO] [Applicable MILDEP] [Applicable Combatant Command] USSOCOM/SOOP/SDO | |
| (CLASSIFICATION) | |

C5.2. LOR RESPONSES – GENERAL INFORMATION

C5.2.1. LOR Receipt Acknowledgement. Within 5 days, the Implementing Agency formally acknowledges receipt of an LOR to the prospective purchaser (to include the Case Identifier). For LOA requests, within 10 days of receipt of the LOR, the Implementing Agency submits LOR transactions to DSCA through DSAMS for input into the 1200 System (see Chapter 13).

C5.2.2. Negative Responses to LORs

C5.2.2.1. Implementing Agency Disapproval Recommendation. If the Implementing Agency recommends that the purchaser's request be disapproved, the Implementing Agency notifies DSCA (Operations Directorate). DSCA coordinates the disapproval with DoS (PM) as required and formally notifies the customer of the disapproval.

C5.2.2.1.1. This procedure APPLIES TO requests for FMS, coproduction, sensitive technical information, leases, etc.

C5.2.2.1.2. This procedure DOES NOT APPLY TO negative responses to technical inquiries on implemented FMS cases unless, if approved, the request would result in an amendment to the case (e.g., requests involving a significant system modification or an increase in the overall capability of the item).

C5.2.2.2. Negative Responses to Training Requests. The following routine training disapproval actions are exempt from this prior coordination requirement. DSCA (Operations, Programs and Strategy Directorates) are information addressees on all such responses.

C5.2.2.2.1. Denial of requests within established policy (e.g., training courses closed to all foreign nationals, information not cleared for release, training for support equipment not in the purchaser's inventory).

C5.2.2.2.2. Notification of class cancellations for previously approved quotas.

C5.2.2.2.3. Quota requests that cannot be accommodated within the desired timeframe.

C5.2.2.2.4. Courses where annual foreign participation is restricted to those invited by Chiefs of Services.

C5.2.2.3. Responses to Requests for Less Than Economic Order Quantity (EOQ). Responses to P&A data or LOA requests for items that cannot be supplied from stock and cannot be procured immediately because they represent less than an EOQ must be coordinated with DSCA (Operations Directorate) and include the following information.

C5.2.2.3.1. If the contractor is willing to provide the quantity requested under separate procurement, and if so at what price and availability date; and,

C5.2.2.3.2. If a USG procurement is planned, the anticipated price and availability date if the requirement is held pending this procurement.

C5.3. LOR RESPONSES – PRICE AND AVAILABILITY (P&A) DATA

P&A data are requested when preliminary data are required by a foreign country or international organization for planning or in anticipation of a purchase under FMS.

C5.3.1. Definition. P&A data are rough order of magnitude estimates of cost and availability of defense articles or services. These estimates are sufficiently accurate for planning purposes, but CANNOT be used for budget purposes and are NOT commitments. P&A DATA ARE NOT VALID FOR USE IN PREPARING AN LOA. The term P&A data is not used to reference data being developed for an LOA. Instead, data compiled for an LOA is referred to as LOA Data (LOAD). When responding to requests for P&A data, the Implementing Agency ensures that:

C5.3.1.1. The DoD Component can recommend release of the articles and/or services.

C5.3.1.2. If the purchaser were to request an LOA, it could be provided (i.e., further clearances such as Congressional Notification or disclosure approval are obtainable).

C5.3.1.3. The purchaser knows to submit an LOR to request an LOA if they want to pursue the purchase.

C5.3.2. P&A Preparation Timeframe. P&A data estimates should be provided to the prospective purchaser within 45 days of the request.

C5.3.3. Classified P&A Data. P&A data are classified only in rare circumstances. Classified P&A data cannot be entered into DSAMS. P&A data, regardless of estimated dollar value or proposed program content, are classified only when:

C5.3.3.1. Directed by the DoS, the Secretary of Defense or his or her designees to include: Assistant Secretary of Defense for International Security Affairs (ASD(ISA)), the Assistant Secretary of Defense for International Security Policy (ASD(ISP)), or the Director, DSCA; or

C5.3.3.2. The purchaser requests classification and the request is approved by the organizations listed in subparagraph C5.3.3.1.

C5.3.4. P&A for Nonstandard Subsystems. P&A data normally include standard U.S. subsystems. In exceptional cases, P&A data for nonstandard subsystems may be requested. The purchaser's P&A request should include a description of the performance characteristics of any nonstandard subsystem(s) and supporting justification. DSCA must approve any proposed responses to requests for nonstandard subsystems. If an Implementing Agency believes it should modify contractor-furnished data for nonstandard subsystem(s), the Implementing Agency notifies the contractor and contractor comments are considered prior to P&A issuance. Significant differences are reconciled.

C5.3.5. P&A Preparation. Activities that are authorized to prepare LOAs are also authorized to prepare P&A data for presentation to purchasers. DSAMS should be used to prepare P&A data response documents whenever possible. DSAMS cannot be used to prepare classified P&A data.

C5.3.6. P&A Data Format. Table C5.T4. presents the information included in P&A data.

Table C5.T4. Price and Availability (P&A) Data

| Price and Availability (P&A) Data | |
|-----------------------------------|---|
| 1 | Major item or service, quantity, and estimated cost. Cost includes adjustments for inflation. If inflation trends on a given system are not known, Under Secretary of Defense, Comptroller (USD(C)) standard inflation factors are used. Include estimated offset costs as provided by the contractor. |
| 2 | Ancillary support equipment necessary for the operation and maintenance of the requested system and its estimated cost. |
| 3 | Integrated logistics support (ILS) elements (e.g., training and publications) and estimated cost. |
| 4 | Estimated assessorial charges. |
| 5 | Source of the data (e.g., last contract award, stock price). |
| 6 | Estimated availability of the articles or services. |
| 7 | Assumptions used in developing the data. For example: The standard DoD Component factors were used in developing the ancillary equipment or ILS elements necessary to support the quantity of items requested. Training and publication cost estimates are based on criteria used by the DoD Component. |
| 8 | Key factors affecting the data. For example: The current contract for this item expires on [insert date] and an LOA must be accepted by [insert date] so that options can be added to the current contract. The production line is due to phase out by [insert date]. Start-up costs apply if an LOA is not accepted by [insert date]. The materiel has a shelf life of [insert date]. |
| 9 | The following is included in all responses for P&A data: “The Price and Availability (P&A) data provided are not valid for purposes of preparing a Letter of Offer and Acceptance (LOA) and may not be adequate for budgetary purposes. These data are for planning/review purposes only, to assist in your Government’s determination whether or not to request an LOA. If [insert the appropriate foreign country] is interested in pursuing this potential purchase, it must request an LOA.” |

C5.3.7. Agents Fees or Sales Commissions. P&A data quotations that contain agents’ fees or sales commissions are coordinated with DSCA (Strategy Directorate) prior to presentation to the purchaser. See Chapter 6, paragraph C6.3.7. for more details.

C5.3.8. Discussions with Foreign Governments and International Organizations. Economic, production, and budget uncertainties make it difficult to develop accurate cost and delivery estimates. Discretion must be exercised by members of the country team or other U.S. officials in discussing P&A data with foreign Government or international organization officials. Only specific data approved and provided by the Implementing Agency or DSCA shall be used.

C5.4. LOR RESPONSES – LETTER OF OFFER AND ACCEPTANCE (LOA)

C5.4.1. Definition. The LOA is the document used by the USG to sell defense articles, defense services (to include training), and design and construction services to a foreign country or international organization under authorities granted in the Arms Export Control Act (AECA) (reference (c)). The LOA itemizes the defense articles and services offered and when implemented becomes an official tender by the USG. The LOA is not used to provide P&A data.

Signed LOAs and their subsequent Amendments and Modifications are also referred to as “FMS cases.”

C5.4.2. LOA Preparation Timeframe. The time required to prepare LOAs varies with the complexity of the sale and the clarity of the purchaser’s LOR. The maximum processing time between Implementing Agency receipt of the LOR and release of the LOA should normally be no more than 120 days, with no adjustments for hold times, additional work needed to clarify requirements, or any other consideration. Although delays may occur while processing some LOAs, Implementing Agencies should process at least 80 percent of their total number of LOAs within 120 days.

C5.4.3. Types of FMS Cases. The standard types of FMS cases are Defined Order, Blanket Order, and Cooperative Logistics Supply Support Arrangement (CLSSA). These cases generally allow the Department of Defense to provide FMS purchasers the same kinds of defense articles and services used by U.S. Forces. Defined Order and Blanket Order cases are also routinely used to provide hardware or services to support commercial end items, obsolete end items (including end items that have undergone system support buy outs), and selected non-U.S. origin military equipment.

C5.4.3.1. Defined Order Cases and/or Lines. Defined order cases and/or lines are commonly used for the sale of items that require item-by-item trade security control throughout the sales process. Items to be provided are stated explicitly on the LOA. The Implementing Agency places the orders. Scope is limited to the quantity of items or described services (including specific performance periods) listed on the LOA.

C5.4.3.1.1. Items PROVIDED on Defined Order Cases and/or Lines. SME (including MDE) and the related initial support package; explosives, including munitions; specific services; and Technical Data Packages (TDPs) are types of items normally provided under defined order cases. Defined order cases and/or lines may also be used to provide specific services that are designated for a specific period of time. MDE items must be identified clearly on the LOA and cannot be “buried” within a line coded as non-MDE.

C5.4.3.1.2. Items NOT PROVIDED on Defined Order Cases and/or Lines. Relatively minor, non-SME items that do not require intensive item-by-item control are not normally provided on defined order cases and/or lines except as part of an initial support package for a system or major end item.

C5.4.3.2. Blanket Order Cases and/or Lines. Blanket order cases and/or lines are used to provide categories of items or services (normally to support one or more end items) with no definitive listing of items or quantities. The purchaser normally submits requisitions. Scope is limited to described item and/or service categories and the purchaser-furnished case and/or line dollar value.

C5.4.3.2.1. Items PROVIDED on Blanket Order Cases. Types of non-SME items and/or services that lend themselves to blanket order cases and/or lines include spare and repair parts (consumables and reparables); publications (forms, catalog data, manuals, stock lists, reports, books, maps); support equipment (tools, test equipment); supplies (fuel, personnel items, commercial consumable items); maintenance (repair, rebuild, minor modifications or alterations); technical assistance (specialist advice or actions, site survey teams, system

integration, item checkout, systems evaluation, study groups to develop engineering requirement plans, technical assistance teams); training (formal or informal); and training aids.

C5.4.3.2.2. Items NOT PROVIDED on Blanket Order Cases and/or Lines. Classified material; SME, including MDE (Appendix 1) and the related initial support item package; commercial items more readily provided from in-country (e.g., lumber, sand, gravel, household goods); TDPs; and ozone depleting substances (ODSs) are not provided on blanket order cases and/or lines.

C5.4.3.3. Cooperative Logistics Supply Support Arrangements (CLSSAs). CLSSAs provide for pre-stockage and storage of DoD-stocked non-SME items that are needed and used by the FMS purchaser on a recurring basis. CLSSA programs consist of two separate cases: a Foreign Military Sales Order (FMSO) I case, and a FMSO II case (described in more detail below). CLSSA LOAs reflect support for end items with no definitive listing of items or quantities, although items and quantities may be negotiated with the purchaser as part of the CLSSA management process. Scope is limited by the LOA description of end items to be supported and dollar values of the FMSO I and II cases. FMSO I and II dollar values are based on the cost of forecasted requirements for the anticipated period of support. The purchaser submits requisitions. See Chapter 6, subparagraph C6.4.2.2. for information on the CLSSA process.

C5.4.3.3.1. Items PROVIDED on CLSSA Cases. Weapon system working capital fund-managed repair parts are typical of items included on CLSSA cases.

C5.4.3.3.2. Items NOT PROVIDED on CLSSA Cases. CLSSAs are not used for initial provisioning of repair parts.

C5.4.4. Classified LOAs. LOAs are classified only in rare circumstances. Classified LOA data cannot be entered into DSAMS. LOAs may be classified when:

C5.4.4.1. Directed by the DoS, the Secretary of Defense or his or her designees to include the ASD(ISA), ASD(ISP), or the Director, DSCA; or

C5.4.4.2. The purchaser has requested classification AND this request has been approved by the organizations listed in subparagraph C5.4.4.1.

C5.4.5. LOAs for Nonstandard Support. LOAs may be used to provide nonstandard support. Nonstandard support may include hardware or services required to support commercial end items; support of obsolete end items, including end items that have undergone system support buy outs; and support of selected non-U.S. origin military equipment. Requests involving sensitive technology or that have significant impact on U.S. programs should be coordinated with DSCA (Programs and Strategy Directorates).

C5.4.6. LOA Preparation. All unclassified portions of LOAs are prepared using DSAMS. See paragraph C5.4.11. for guidance pertaining to preparation of classified LOAs.

C5.4.6.1. Preparing Activity. Certain organizations are authorized to prepare FMS cases. See Table C5.T2. for a list of these activities. These organizations, known as Implementing Agencies, are responsible for preparing and processing LOAs in accordance with this Manual. When an LOR received by an Implementing Agency includes a requirement for an item managed by another MILDEP/Defense Agency, the LOR shall be coordinated with that MILDEP/Defense Agency. Because the LOR was submitted as a single program, the response is generally a Multi-Service LOA particularly when the purchaser advises the USG that it requires multiple weapon systems on a single case for its own budgetary and/or other internally based reasons. If multiple LOAs, separated by Implementing Agency and major weapon system, are used to respond to this type of LOR, DSCA (Operations and Strategy Directorates) approval is required. The Implementing Agency must provide DSCA with justification/rationale for the use of multiple LOAs. When the Implementing Agency for the Multi-Service LOA cannot be readily identified, cases are referred to DSCA (Operations and Strategy Directorates). Implementing Agencies are encouraged to consolidate requirements as much as possible - multiple LORs from the same purchaser may be answered by a single LOA. The purchaser's preference and the ability of each Implementing Agency to manage funds and track logistics data are deciding factors.

C5.4.6.2. Purchaser Participation in the LOA Preparation Process. Purchaser involvement early on in the LOA development process is essential to ensure the final document provides the best "fit" for their requirements. Purchasers should be encouraged to attend meetings and receive correspondence designed to clarify LOR information. As the development of the LOA progresses, there are many instances where purchaser participation and input are necessary. For example, the purchaser should help identify unique requirements and special needs that must be accommodated in the final sales document. Any unique notes or conditions being considered may be provided to the purchaser for advance review to ensure these special case and/or program-unique needs are addressed. Such meetings and agreements can be recorded in the Case Remarks area in DSAMS to preserve them with the document.

C5.4.7. LOA Format. The LOA format including sample data, LOA Information, and instructions for preparation are provided in Figures C5.F2. through C5.F5.

C5.4.8. Additional LOA Information

C5.4.8.1. Standard Terms and Conditions and LOA Information. Standard Terms and Conditions (see Figure C5.F3.) are an official part of each LOA, whether or not they are attached to a particular copy. The Standard Terms and Conditions that are in effect at the time the LOA is prepared and signed are the conditions that apply throughout the life of the FMS case. An LOA Information document (see Figure C5.F4.) provides information describing some of the codes and language used on the LOA. Both the LOA Standard Terms and Conditions and the LOA Information documents must be attached to the original LOA that is sent to the purchaser for review and/or acceptance. The Case Manager must retain a copy of the LOA and all attachments in the official case file.

Figure C5.F2. Sample Letter of Offer and Acceptance (LOA)


| | | | |
|--|--|---|--------------------------|
|  | <p>United States of America</p> <p>Letter of Offer and Acceptance (LOA)</p> <p>BN-Q-SHE</p> | | |
| <p>Based on BN/MODAT/2312 dated 14 February 2006.</p> <p>Pursuant to the Arms Export Control Act, the Government of the United States (USG) offers to sell to the Embassy of Bandaria Office of the Air Attaché 1234 Massachusetts Ave, NW Washington, DC 29999, the defense articles or defense services (which may include defense design and construction services) collectively referred to as "items," set forth herein, subject to the provisions, terms, and conditions in this LOA.</p> <p>This LOA provides for AGM-65F/G Maverick missiles and related support.</p> <p>Estimated Cost: \$7,366,907 Initial Deposit: \$200,860</p> <p>Terms of Sale: Cash Prior to Delivery Dependable Undertaking</p> <p>This offer expires on 1 October 2003. Unless a request for extension is made by the Purchaser and granted by the USG, the offer terminates on the expiration date.</p> <p>This LOA consists of page 1 through page 14.</p> <p>The undersigned are authorized representatives of their Governments and hereby offer and accept, respectively, this LOA:</p> | | | |
| <p>_____</p> <p>U.S. Signature</p> | <p><u>20 Aug 2006</u></p> <p>Date</p> | <p>_____</p> <p>Purchaser Signature</p> | <p>_____</p> <p>Date</p> |
| <p>_____</p> <p>Typed Name and Title</p> | <p>_____</p> <p>Typed Name and Title</p> | | |
| <p><u>Defense Security Cooperation Agency</u></p> <p>Implementing Agency</p> | | <p>_____</p> <p>Agency</p> | |
| <p><u>DSCA Reviewed/Approved</u></p> <p>DSCA</p> | <p><u>26 Aug 2006</u></p> <p>Date</p> | | |
| <p>Information to be provided by the Purchaser:</p> <p>Mark For Code _____; Freight Forwarder Code _____; Purchaser Procuring Agency Code _____;</p> <p>Name and Address of the Purchaser's Paying Office _____</p> <p>_____</p> | | | |

Figure C5.F2. Sample Letter of Offer and Acceptance (LOA) (continued)

Items to be supplied (costs and months for delivery are estimates):

| (1) Itm Nbr | (2) Description/Condition | (3) Qty, Unit of Issue | (4) Costs (a) Unit | (b) Total | (5) SC/MOS/TA | (6) Ofr Rel Cde | (7) Del Trm Cde |
|-------------------|---|------------------------------------|--------------------------|-------------|------------------|--------------------------|--------------------------|
| 001 | B2G 9B2G00MAVERCK (Y) MAVERICK MISSILE AGM 65F/G | 71 EA | \$63,339.53 | \$4,497,107 | X(16-30) TA4 | Z | 8 |
| 002 | B2G 810000MAVC0NT (N) MAVERICK MISSILE CONTAINER | 10 EA | \$95,000.00 | \$950,000 | P(18-30) TA5 | A | 2 |
| 003 | B2G 9B2GOOMAVRC0M (N) MAVERICK COMPONENTS Guidance Control System | XX | | \$750,000 | P(-) TA5 | A | 4 |
| 004 | B2G 9B2G00MAVRSUP (N) MAVERICK SUPPORT EQUIPMENT Dolly NSN: 3920-00-609-0178 | 20 EA | \$30,000.00 | \$600,000 | S(12-24) TA3 | A | 4 |
| 005 | R9Z 079Z000THSERV (N) OTHER SERVICES | XX | | \$40,000 | S(1-34) TA3 | - | - |

Estimated Cost Summary:

| | |
|------------------------------------|-------------|
| (8) Net Estimated Cost | \$6,837,107 |
| (9) Packing, Crating, and Handling | \$154,722 |
| (10) Administrative Charge | \$259,810 |
| (11) Transportation | \$115,268 |
| (12) Other | \$0 |
| (13) Total Estimated Cost | \$7,366,907 |

To assist in fiscal planning, the USG provides the following anticipated costs of this LOA:ESTIMATED PAYMENT SCHEDULE

| <u>Payment Date</u> | <u>Quarterly</u> | <u>Cumulative</u> |
|---------------------|------------------|-------------------|
| Initial Deposit | | \$200,860 |
| 15 Mar 2007 | \$222,605 | \$423,465 |
| 15 Jun 2007 | \$325,491 | \$748,956 |
| 15 Sep 2007 | \$185,199 | \$934,155 |
| 15 Dec 2007 | \$166,366 | \$1,050,521 |
| 15 Mar 2008 | \$431,093 | \$1,481,560 |
| 15 Jun 2008 | \$1,086,321 | \$2,567,881 |
| 15 Sep 2008 | \$2,019,944 | \$4,587,825 |
| 15 Dec 2008 | \$2,779,082 | \$7,366,907 |

BN-Q-SHE
Page 2 of 14 Pages

Figure C5.F2. Sample Letter of Offer and Acceptance (LOA) (continued)

Lines and notes are included for illustration purposes only.

Explanation for acronyms and codes, and financial information, may be found in the "Letter of Offer and Acceptance Information."

Signed Copy Distribution:

1. Upon acceptance, the Purchaser should return one signed copy of this LOA to the Defense Finance and Accounting Service, Denver (DFAS Denver), ATTN: DFAS-ADY/DE, 6760 E. Irvington Place, Denver, CO 80279-2000. Simultaneously, wire transfer of the initial deposit or amount due with acceptance of this LOA document (if required) should be made to financial institution identifier 021030004 TREAS NYC, Agency Location Code 00003801, showing "Payment from Government of Bandaria for BN-Q-SEH," or a check for the initial deposit, made payable to the U.S. Treasury, mailed to DFAS-ADCTA/DE, P.O. Box 173659, Denver, CO 80217-3659, showing "Payment from Government of Bandaria for BN-Q-SEH." Wire transfer is preferred.

2. One signed copy should be returned to Director, Defense Security Cooperation Agency, 201 12th St South, Suite 203, Arlington VA 22203-5408.

Note 1. LINE ITEM 001 - AGM-65F/G Missiles.

Line Item 001 provides [Insert enough information to adequately describe each line included on the LOA (e.g., configuration, delivery schedule, etc.)]

Note 2. LINE ITEM 002 – Maverick Missile Containers.

Line Item 002 provides [Insert enough information to adequately describe each line included on the LOA (e.g., configuration, delivery schedule, etc.)]

Note 3. LINE ITEM 003 - Maverick Components.

Line Item 003 provides [Insert enough information to adequately describe each line included on the LOA (e.g., configuration, delivery schedule, etc.)]

Note 4. LINE ITEM 004 - Maverick Support Equipment.

Line Item 004 provides [Insert enough information to adequately describe each line included on the LOA (e.g., configuration, delivery schedule, etc.)]

Note 5. LINE ITEM 005 - Other Services.

Line Item 005 provides [Insert enough information to adequately describe each line included on the LOA (e.g., configuration, delivery schedule, etc.)]

Note 6. MAVERICK SYSTEM SALE.

[Insert case-unique notes as needed to provide more detailed information regarding the offer.]

Note 7. STATUS OF FORCES AGREEMENT.

USG military and civilian personnel present in the territory of the purchaser for the purpose of implementing this LOA shall be entitled to all of the rights, privileges, and immunities accorded in the Agreement Concerning the Status of U.S. Personnel in Bandaria regarding the status of their forces, dated September 4, 1992 and any related implementing agreements.

BN-Q-SHE
Page 3 of 14 Pages

Figure C5.F2. Sample Letter of Offer and Acceptance (LOA) (continued)

Note 8. NONRECURRING COSTS - WAIVER.

Nonrecurring Costs (NC) apply to line item(s) 001 of this LOA. The customer's request to waive these charges has been approved by DSCA memorandum I-03/12345, dated May 1, 2003. Therefore, these costs have not been included in this case.

Note 9. OFFSET COSTS.

The Department of Defense is not a party to any offset agreements/arrangements which may be required by the Purchaser in relation to the sales made in this LOA and assumes no obligation to administer or satisfy any offset requirements or bear any of the associated costs. To the extent that the Purchaser requires offsets in conjunction with this sale, offset costs may be included in the price of contracts negotiated under this LOA. If the Purchaser desires visibility into these costs, this should be discussed with the contractor at the time the offset agreement is signed. The contracting officer shall ensure that the offset costs priced into the FMS contract are reasonable and consistent with the offset agreement.

Note 10. ESTIMATED CASE CLOSURE.

The estimated closure date is 24 months after the date of projected final delivery.

Note 11. TRANSPORTATION AND SERVICES.

- A. USG agrees to provide, transportation services for the items identified in this LOA to the Point of Delivery. Purchaser's property will be transported at the Purchaser's risk.
- B. Purchaser will accept USG delivery listings as the basis for billing and proof of shipment.
- C. Purchaser will accept responsibility for clearance of materiel through its customs at the POD, and for movement of the materiel from its POD to the ultimate in-country destination.
- D. Purchaser will appoint a duly authorized official to accept and sign for materiel at the POD, and submit outturn message and report.
- E. Purchaser will absorb losses of materiel the USG does not in fact recover from an independent carrier or handler, including where the USG is self-insured.
- F. Purchaser will self-insure such shipments, or obtain commercial insurance without any right of subrogation of any claim against the United States.
- G. The USG will assist the Purchaser in processing any claims that may arise for lost or damaged shipments, in the same manner it processes claims for USG-owned materiel. Collection of revenue, if any, resulting from approved claims will be credited to the Purchaser's account.
- H. If the purchaser proposes to take delivery and custody of the classified material in the U.S. and use its own facilities and transportation for onward shipment to its territory, a Transportation Plan is required. The Transportation Plan is developed by the DoD Component that prepares the LOA in coordination with the purchasing Government as outlined in the Security Assistance Management Manual, Chapter 3. Purchasers may obtain assistance in the development of the Transportation Plan with their cleared freight forwarder. Further, the purchaser will notify the Implementing Agency of any changes as they occur to the Transportation Plan. The Implementing Agency that initiates the FMS transaction shall designate the security officials who are authorized to evaluate the Transportation Plan to determine whether the plan adequately ensures protection of the highest level of classified material involved. The purchaser will be notified of the approval or disapproval of the plan and any changes. If disapproved, the purchaser will be notified of the reason for disapproval and, when possible, changes that would be acceptable to the USG. As an alternative, the USG will ship the classified material by the Defense Transportation System."

BN-Q-SHE
Page 4 of 14 Pages

Figure C5.F2. Sample Letter of Offer and Acceptance (LOA) (continued)

Note 12. MISSILE TECHNOLOGY CONTROL REGIME.

Paragraph 2.3 of the Standard Terms and Conditions of this LOA discusses use and transfer restrictions on articles and services provided under this LOA and emphasizes that the Purchaser "shall not use or permit their use for purposes other than those authorized, unless the written consent of the USG has first been obtained." The customer agrees not to divert articles and services received under this LOA for purposes or uses other than those for which furnished to include, but not limited to, use as MTCR equipment or technology as discussed in section 74 of the AECA (22 USC 2797c). The USG also reserves the right to take action under section 73(a)(2) of the AECA (22 USC 2797b(a)(2)) in the case of any export or transfer of any MTCR equipment or technology that contributes to the acquisition, design, development or production of missiles in a country that is not an MTCR adherent.

Note 13. ANTI-TAMPER (AT) MEASURES.

The United States Government (USG) may incorporate Anti-Tamper (AT) protection into weapon systems and components. The AT protection will not impact operations, maintenance, or logistics provided that all terms delineated in the system technical documentation are followed.

Note 14. UNAUTHORIZED USE OF DEFENSE ARTICLES.

Defense articles furnished under this LOA may be used only for those authorized purposes set forth in section 2.2 of the Standard Terms and Conditions, unless the written consent of the U.S. Government has been obtained for a different use. The U.S. Government retains the right to verify reports that such defense articles have been used for purposes not authorized or for uses not consented to by the U.S. Government.

Note 15. CONTRACT ADMINISTRATION SERVICES (CAS) SURCHARGE.

For any lines on this LOA document with a Source of Supply of "X" or "P," the Contract Administration Services (CAS) surcharge rates apply: for contract administration, .65%; for quality assurance and inspection, .65%; for contract audit, .2%; and for overseas CAS, .2%.

Note 16. ACCESSORIAL CHARGES.

- a. A PC&H charge has been applied to Lines 001 and 004.
- b. A transportation charge has been applied to Lines 001 (based upon the current Transportation Look-up Table) and 004.

Note 17. ADMINISTRATIVE SURCHARGE.

An administrative surcharge of 3.8% has been applied to Lines 001-005.

Figure C5.F3. Letter of Offer and Acceptance (LOA) Standard Terms and Conditions

LETTER OF OFFER AND ACCEPTANCE STANDARD TERMS AND CONDITIONS

Section

- 1 Conditions -United States Government (USG) Obligations
- 2 Conditions - General Purchaser Agreements
- 3 Indemnification and Assumption of Risks
- 4 Financial Terms and Conditions
- 5 Transportation and Discrepancy Provisions
- 6 Warranties
- 7 Dispute Resolution

1 Conditions -United States Government (USG) Obligations

- 1.1 Unless otherwise specified, items will be those which are standard to the U.S. Department of Defense (DoD), without regard to make or model.
- 1.2 The USG will furnish the items from its stocks and resources, or will procure them under terms and conditions consistent with DoD regulations and procedures. When procuring for the Purchaser, DoD will, in general, employ the same contract clauses, the same contract administration, and the same quality and audit inspection procedures as would be used in procuring for itself; except as otherwise requested by the Purchaser and as agreed to by DoD and set forth in this LOA. Unless the Purchaser has requested, in writing, that a sole source contractor be designated, and this LOA reflects acceptance of such designation by DoD, the Purchaser understands that selection of the contractor source to fill requirements is the responsibility of the USG, which will select the contractor on the same basis used to select contractors for USG requirements. Further, the Purchaser agrees that the U.S. DoD is solely responsible for negotiating the terms and conditions of contracts necessary to fulfill the requirements in this LOA.
- 1.3 The USG will use its best efforts to provide the items for the dollar amount and within the availability cited.
- 1.4 Under unusual and compelling circumstances, when the national interest of the U.S. requires, the USG reserves the right to cancel or suspend all or part of this LOA at any time prior to the delivery of defense articles or performance of defense services. The USG shall be responsible for termination costs of its suppliers resulting from cancellation or suspension under this section. Termination by the USG of its contracts with its suppliers, other actions pertaining to such contracts, or cessation of deliveries or performance of defense services is not to be construed as cancellation or suspension of this LOA itself under this section.
- 1.5 U.S. personnel performing defense services under this LOA will not perform duties of a combatant nature, including duties relating to training and advising that may engage U.S. personnel in combat activities outside the U.S., in connection with the performance of these defense services.
- 1.6 The assignment or employment of U.S. personnel for the performance of this LOA by the USG will not take into account race, religion, national origin, or sex.
- 1.7 Unless otherwise specified, this LOA may be made available for public inspection consistent with the national security of the United States.

2 Conditions - General Purchaser Agreements

- 2.1 The Purchaser may cancel this LOA or delete items at any time prior to delivery of defense articles or performance of defense services. The Purchaser is responsible for all costs resulting from cancellation under this section.

BN-Q-SHE
Page 6 of 14 Pages

Figure C5.F3. Letter of Offer and Acceptance (LOA) Standard Terms and Conditions (continued)

- 2.2 The Purchaser agrees, except as may otherwise be mutually agreed in writing, to use the defense articles sold hereunder only:
- 2.2.1 for purposes specified in any Mutual Defense Assistance Agreement between the USG and the Purchaser
 - 2.2.2 for purposes specified in any bilateral or regional defense treaty to which the USG and the Purchaser are both parties, if section 2.2. is inapplicable; or,
 - 2.2.3 for internal security, individual self-defense, preventing or hindering the proliferation of weapons of mass destruction and the means of delivering such weapons, or civic action, if sections 2.2.1 and 2.2.2 are inapplicable.
- 2.3 The Purchaser will not transfer title to, or possession of, the defense articles, components and associated support materiel, related training or other defense services (including plans, specifications, or information), or technology furnished under this LOA to anyone who is not an officer, employee, or agent of the Purchaser (excluding transportation agencies), and shall not use or permit their use for purposes other than those authorized, unless the written consent of the USG has first been obtained. The Purchaser will ensure, by all means available to it, respect for proprietary rights in any items and any plans, specifications, or information furnished, whether patented or not. The Purchaser also agrees that the defense articles offered will not be transferred to Cyprus or otherwise used to further the severance or division of Cyprus, and recognizes that the U.S. Congress is required to be notified of any substantial evidence that the defense articles sold in this LOA have been used in a manner that is inconsistent with this provision.
- 2.4. To the extent that items, including plans, designs, specifications, technical data, or information, furnished in connection with this LOA may be classified by the USG for security purposes, the Purchaser certifies that it will maintain a similar classification and employ measures necessary to preserve such security, equivalent to those employed by the USG and commensurate with security agreements between the USG and the Purchaser. If such security agreements do not exist, the Purchaser certifies that classified items will be provided only to those individuals having an adequate security clearance and a specific need to know in order to carry out the LOA program and that it will promptly and fully inform the USG of any compromise, or possible compromise, of U.S. classified material or information furnished pursuant to this LOA. The Purchaser further certifies that if a U.S. classified item is to be furnished to its contractor pursuant to this LOA: (a) item will be exchanged through official Government channels, (b) the specified contractor has been granted a facility security clearance by the Purchaser at a level at least equal to the classification level of the U.S. information involved, (c) all contractor personnel requiring access to such items have been cleared to the appropriate level by the Purchaser, and (d) the Purchaser will assume responsibility for administering security measures while in the contractor's possession. If a commercial transportation agent is to be used for shipment, the Purchaser certifies that such agent has been cleared at the appropriate level for handling classified items. These measures will be maintained throughout the period during which the USG may maintain such classification. The USG will use its best efforts to notify the Purchaser if the classification is changed.
- 3 Indemnification and Assumption of Risks
- 3.1 The Purchaser recognizes that the USG will procure and furnish the items described in this LOA on a non-profit basis for the benefit of the Purchaser. The Purchaser therefore undertakes to indemnify and hold the USG, its agents, officers, and employees harmless from any and all loss or liability (whether in tort or in contract) which might arise in connection with this LOA because of:
- 3.1.1 Injury to or death of personnel of Purchaser or third parties, or
 - 3.1.2 Damage to or destruction of (a) property of DoD furnished to Purchaser or suppliers specifically to implement this LOA, (b) property of Purchaser (including the items ordered by Purchaser pursuant to this LOA, before or after passage of title to Purchaser), or (3) property of third parties, or
 - 3.1.3 Infringement or other violations of intellectual property or technical data rights.

BN-Q-SHE
Page 7 of 14 Pages

Figure C5.F3. Letter of Offer and Acceptance (LOA) Standard Terms and Conditions (continued)

- 3.2 Subject to express, special contractual warranties obtained for the Purchaser, the Purchaser agrees to relieve the contractors and subcontractors of the USG from liability for, and will assume the risk of, loss or damage to:
- 3.2.1 Purchaser's property (including items procured pursuant to this LOA, before or after passage of title to Purchaser), and
- 3.2.2 Property of DoD furnished to suppliers to implement this LOA, to the same extent that the USG would assume for its property if it were procuring for itself the items being procured.
- 4 Financial Terms and Conditions
- 4.1 The prices of items to be procured will be billed at their total cost to the USG. Unless otherwise specified, the cost of items to be procured, availability determination, payment schedule, and delivery projections quoted are estimates based on the best available data. The USG will use its best efforts to advise the Purchaser or its authorized representatives of:
- 4.1.1 Identifiable cost increases that might result in an overall increase in the estimated costs in excess of ten percent of the total value of this LOA,
- 4.1.2 Changes in the payment schedule, and
- 4.1.3 Delays which might significantly affect estimated delivery dates. USG failure to advise of the above will not change the Purchaser's obligation under all subsections of section 4.4.
- 4.2 The USG will refund any payments received for this LOA which prove to be in excess of the final total cost of delivery and performance and which are not required to cover arrearages on other LOAs of the Purchaser.
- 4.3 Purchaser failure to make timely payments in the amounts due may result in delays in contract performance by DoD contractors, claims by contractors for increased costs, claims by contractors for termination liability for breach of contract, claims by USG or DoD contractors for storage costs, or termination of contracts by the USG under this or other open Letters of Offer and Acceptance of the Purchaser at the Purchaser's expense.
- 4.4 The Purchaser agrees:
- 4.4.1 to pay to the USG the total cost to the USG of the items even if costs exceed the amounts estimated in this LOA.
- 4.4.2 to make payment(s) by check or wire transfer payable in U.S. dollars to the Treasurer of the United States.
- 4.4.3 if Terms of Sale specify "Cash with acceptance", to forward with this LOA a check or wire transfer in the full amount shown as the estimated Total cost, and agrees to make additional payment(s) upon notification of cost increase(s) and request(s) for funds to cover such increase(s).
- 4.4.4 if Terms of Sale specify payment to be "Cash prior to delivery", to pay to the USG such amounts at such times as may be specified by the USG (including initial deposit) in order to meet payment requirements for items to be furnished from the resources of DoD. USG requests for funds may be based on estimated costs to cover forecasted deliveries of items. Payments are required 90 days in advance of the time DoD plans such deliveries or incurs such expenses on behalf of the Purchaser.
- 4.4.5 if Terms of Sale specify payment by "Dependable Undertaking," to pay to the USG such amounts at such times as may be specified by the USG (including initial deposit) in order to meet payments required by contracts under which items are being procured, and any damages and costs that may accrue from termination of contracts by the USG because of Purchaser's cancellation of this LOA. USG requests for funds may be based upon estimated requirements for advance and progress payments to suppliers, estimated termination liability, delivery forecasts, or evidence of constructive delivery, as the case may be. Payments are required 90 days in advance of the time USG makes payments on behalf of the Purchaser.

BN-Q-SHE
Page 8 of 14 Pages

Figure C5.F3. Letter of Offer and Acceptance (LOA) Standard Terms and Conditions (continued)

- 4.4.6 if Terms of Sale specify "Payment on delivery", that bills may be dated as of the date(s) of delivery of the items, or upon forecasts of the date(s) thereof.
- 4.4.7 that requests for funds or billing are due and payable in full on presentation or, if a payment date is specified in the request for funds or bill, on the payment date so specified, even if such payment date is not in accord with the estimated payment schedule, if any, contained in this LOA. Without affecting Purchaser's obligation to make such payment(s) when due, documentation concerning advance and progress payments, estimated termination liability, or evidence of constructive delivery or shipment in support of requests for funds or bills will be made available to the Purchaser by DoD upon request. When appropriate, the Purchaser may request adjustment of any questioned billed items by subsequent submission of a discrepancy report.
- 4.4.8 to pay interest on any net amount by which it is in arrears on payments, determined by considering collectively all of the Purchaser's open LOAs with DoD. Interest will be calculated on a daily basis. The principal amount of the arrearage will be computed as the excess of cumulative financial requirements of the Purchaser over total cumulative payments after quarterly billing payment due dates. The rate of interest paid will be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the USG as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.
- 4.4.9 to designate the Procuring Agency and responsible Paying Office and address thereof to which the USG will submit requests for funds and bills under this LOA.
- 5 Transportation and Discrepancy Provisions
- 5.1 The USG agrees to deliver and pass title to the Purchaser at the initial point of shipment unless otherwise specified in this LOA. With respect to items procured for sale to the Purchaser, this will normally be at the manufacturer's loading facility; with respect to items furnished from USG stocks, this will normally be at the U.S. depot. Articles will be packed, crated, or otherwise prepared for shipment prior to the time title passes. If "Point of Delivery" is specified other than the initial point of shipment, the supplying U.S. Department or Agency will arrange movement of the articles to the authorized delivery point as a reimbursable service but will pass title at the initial point of shipment. The USG disclaims any liability for damage or loss to the items incurred after passage of title irrespective of whether transportation is by common carrier or by the U.S. Defense Transportation System.
- 5.2 The Purchaser agrees to furnish shipping instructions which include Mark For and Freight Forwarder Codes based on the Offer Release Code.
- 5.3 The Purchaser is responsible for obtaining insurance coverage and customs clearances. Except for articles exported by the USG, the Purchaser is responsible for ensuring that export licenses are obtained prior to export of U.S. defense articles. The USG incurs no liability if export licenses are not granted or they are withdrawn before items are exported.
- 5.4 The Purchaser agrees to accept DD Forms 645 or other delivery documents as evidence that title has passed and items have been delivered. Title to defense articles transported by parcel post passes to the Purchaser at the time of parcel post shipment. Standard Form 364 will be used in submitting claims to the USG for overage, shortage, damage, duplicate billing, item deficiency, improper identification, improper documentation, or non-shipment of defense articles and non-performance of defense services and will be submitted promptly by the Purchaser. DoD will not accept claims related to items of \$200 or less for overages, shortages, damages, non-shipment, or non-performance. Any claim, including a claim for shortage (but excluding a claim for

Figure C5.F3. Letter of Offer and Acceptance (LOA) Standard Terms and Conditions (continued)

non-shipment/non-receipt of an entire lot), received after 1 year from passage of title to the article or from scheduled performance of the service will be disallowed by the USG unless the USG determines that unusual and compelling circumstances involving latent defects justify consideration of the claim. Claims, received after 1 year from date of passage of title or initial billing, whichever is later, for non-shipment/non-receipt of an entire lot will be disallowed by the USG. The Purchaser agrees to return discrepant articles to USG custody within 180 days from the date of USG approval of such return.

6 Warranties

- 6.1 The USG does not warrant or guarantee any of the items sold pursuant to this LOA except as provided in section 6.1.1. DoD contracts include warranty clauses only on an exception basis. If requested by the Purchaser, the USG will, with respect to items being procured, and upon timely notice, attempt to obtain contract provisions to provide the requested warranties. The USG further agrees to exercise, upon the Purchaser's request, rights (including those arising under any warranties) the USG may have under contracts connected with the procurement of these items. Additional costs resulting from obtaining special contract provisions or warranties, or the exercise of rights under such provisions or warranties, will be charged to the Purchaser.
- 6.1.1 The USG warrants the title of items sold to the Purchaser hereunder but makes no warranties other than those set forth herein. In particular the USG disclaims liability resulting from infringement or other violation of intellectual property or technical data rights occasioned by the use or manufacture outside the U.S. by or for the Purchaser of items supplied hereunder.
- 6.1.2 The USG agrees to exercise warranties on behalf of the Purchaser to assure, to the extent provided by the warranty, replacement or correction of such items found to be defective, when such materiel is procured for the Purchaser.
- 6.2 Unless the condition of defense articles is identified to be other than serviceable (for example, "As-is"), DoD will repair or replace at no extra cost defense articles supplied from DoD stocks which are damaged or found to be defective in respect to materiel or workmanship when it is established that these deficiencies existed prior to passage of title, or found to be defective in design to such a degree that the items cannot be used for the purpose for which they were designed. Qualified representatives of the USG and of the Purchaser will agree on the liability hereunder and the corrective steps to be taken.

7 Dispute Resolution

- 7.1 This LOA is subject to U.S. Federal procurement law.
- 7.2 The USG and the Purchaser agree to resolve any disagreement regarding this LOA by consultations between the USG and the Purchaser and not to refer any such disagreement to any international tribunal or third party for settlement.

Figure C5.F4. Letter of Offer and Acceptance (LOA) Information

LETTER OF OFFER AND ACCEPTANCE INFORMATION

1. GENERAL. This provides basic information pertaining to the LOA for U.S. and Purchaser use. Additional information may be obtained from the Security Assistance Management Manual, DoD 5105.38-M, the in-country Security Assistance Office, the DSCA Country Director, or from the implementing agency.

2. INFORMATION ENTERED BY THE USG

a. Terms of Sale, and Purchaser responsibilities under those Terms, are described on the LOA. A list of all Terms of Sale, with explanations for each, are shown in DoD 5105.38-M.

b. Description/Condition. The item description consists of coding for use in U.S. management of the LOA (starting with Generic/MASL and MDE "(Y)" or non-MDE "(N)" data such as that in DoD 5105.38-M) plus a short description of what is to be provided. When items are serviceable, Code "A" (new, repaired, or reconditioned materiel which meets U.S. Armed Forces standards of serviceability) may be used; otherwise, Code "B" (unserviceable or mixed condition without repair, restoration, or rehabilitation which may be required) may be used. In some instances, reference to a note in the Terms and Conditions may complement or replace these codes.

c. The Unit of Issue is normally "EA" (each, or one; for example, 40 EA) or blank (unit of issue not applicable; for example, services or several less significant items consolidated under one LOA Item Number). When blank, a quantity or Unit Cost is not shown.

d. The Source Code (SC) in the Articles or Services to be Supplied Section is one or more of the following:

- S - Shipment from DoD stocks or performance by DoD personnel
- P - From new procurement
- R - From rebuild, repair, or modification by the USG
- X - Mixed source, such as stock and procurement, or undetermined
- E - Excess items, as-is
- F - Special Defense Acquisition Fund (SDAF) items

e. Availability lead time cited is the number of months (MOS) estimated for complete delivery of defense articles or performance of defense services. The lead time starts with Acceptance of this Offer, including the conclusion of appropriate financial arrangements, and ends when items are made available to transportation.

f. Type of Assistance (TA) Codes are as follows:

- 3 - Source Code S, R, or E; based on Arms Export Control Act (AECA) Section 21(b).
- 4 - Source Code X; AECA Sections 21(b), 22(a), 29, or source undetermined.
- 5 - Source Code P; AECA Section 22(a).
- 6 - Source Code S, R, or E, payment on delivery; AECA Section 21(d).
- 7 - Source Code P, dependable undertaking with 120 days payment after delivery; AECA Section 22(b).
- 8 - Source Code S, R, or E, stock sales with 120 days payment after delivery; AECA Section 21(d).
- M - MAP Merger; Foreign Assistance Act (FAA) Section 503(a)(3).
- N - FMS Credit (Nonrepayable); AECA Sections 23 or 24.
- U - Source Code P; Cooperative Logistics Supply Support Arrangement (CLSSA) Foreign Military Sales Order (FMSO) I.
- V - Source Code S; CLSSA FMSO II stocks acquired under FMSO I.
- Z - FMS Credit; AECA Sections 23 or 24.

g. Training notes: AP - Annual training program; SP - Special training designed to support purchases of U.S. equipment; NC - This offer does not constitute a commitment to provide U.S. training; SC - U.S. training concurrently being addressed in separate LOA; NR - No U.S. training is required in support of this purchase.

Figure C5.F4. Letter of Offer and Acceptance (LOA) Information (continued)

h. Offer Release Codes (Ofr Rel Cde) and Delivery Term Codes (Del Trm Cde) below may also be found in DoD 4500.9-R. The following Offer Release Codes also pertain to release of items for shipment back to Purchaser on repair LOAs:

A - Freight and parcel post shipments will be released automatically by the shipping activity without advance notice of availability.

Y - Advance notice is required before release of shipment, but shipment can be released automatically if release instructions are not received by shipping activity within 15 calendar days. Parcel post shipments will be automatically released.

Z - Advance notice is required, before release of shipment. Shipping activity will follow-up on the notice of availability until release instructions are furnished. Parcel post shipments will be automatically released.

X - The Implementing Agency (IA) and country representative have agreed that the:

-- IA will sponsor the shipment to a country address. Under this agreement, the Freight Forwarder Code must also contain X and a Customer-within-country (CC) Code must be entered in the Mark For Code on the front page of the LOA. The MAPAD must contain the CC Code and addresses for each type of shipment (parcel post or freight).

-- Shipments are to be made to an assembly point or staging area as indicated by clear instructions on exception requisitions. Under this agreement, the Freight Forwarder Code must contain W. A Mark For Code may be entered in the Mark For Code space on the front page of the LOA and the MAPAD must contain the Mark For Code if the Mark For Address is to be used on the shipment to the assembly point or staging area.

i. For the following Delivery Term Codes, DoD delivers:

2 - To a CONUS inland point (or overseas inland point when the origin and destination are both in the same geographic area)

3 - At the CONUS POE alongside the vessel or aircraft

4 - Not applicable (Purchaser has full responsibility at the point of origin. Often forwarded collect to country freight forwarder.)

5 - At the CONUS POE on the inland carrier's equipment

6 - At the overseas POD on board the vessel or aircraft

7 - At the overseas inland destination on board the inland carrier's equipment

8 - At the CONUS POE on board the vessel or aircraft

9 - At the overseas POD alongside the vessel or aircraft

Delivery Term Codes showing DoD transportation responsibility for repair LOAs are shown below. The LOA will provide a CONUS address for each item identified for repair. The customer must assure this address is shown on all containers and documentation when materiel is returned.

A - From overseas POE through CONUS destination to overseas POD on board the vessel or aircraft

B - From overseas POE through CONUS destination to CONUS POE on board the vessel or aircraft

C - From CONUS POD on board the vessel or aircraft through CONUS destination to CONUS POE on board the vessel or aircraft

D - From CONUS POD on board the vessel or aircraft through the CONUS destination to overseas POD on board the vessel or aircraft

E - Not applicable (Purchaser has complete responsibility.)

F - From overseas inland point through CONUS destination to overseas inland destination

G - From overseas POE through CONUS destination to overseas POD alongside vessel or aircraft

H - (For classified items) From CONUS inland point to CONUS POE alongside vessel or aircraft

J - (For classified cryptographic items) From CONUS inland point to overseas inland destination

Figure C5.F4. Letter of Offer and Acceptance (LOA) Information (continued)

3. INFORMATION TO BE ENTERED BY THE PURCHASER. Mark For and Freight Forwarder Codes are maintained in the Military Assistance Program Address Directory (MAPAD), DoD 4000.25-8-M). The Purchaser Procuring Agency should show the code for the Purchaser's Army, Navy, Air Force, or other agency that is purchasing the item(s). The Name and Address of the Purchaser's Paying Office is also required.

a. Mark For Code. This Code should be entered for use in identifying the address of the organization in the Purchaser country that is to receive the items. This includes return of items repaired under an LOA.

(1) This address will be added by the U.S. DoD to the Ship To address on all freight containers. It will also appear on items forwarded by small parcel delivery service, including parcel post. The address should include the port of discharge name and designator (water or air); country name, country service name, street, city, state or province, and (if applicable) in-country zip or similar address code.

(2) Shippers are not authorized to apply shipment markings. If codes and addresses are not published, containers will be received at the freight forwarder or U.S. military representative in-country unmarked for onward shipment with resultant losses, delays, and added costs. The USG will sponsor shipment of this materiel to FOB U.S. point of origin.

b. Freight Forwarder Code. When Offer Release Code X applies, Code X or W, discussed under Offer Release Code X above, must be entered.

4. FINANCIAL

a. The method of financing is shown in the LOA, Amendment, or Modification. The initial deposit required with Purchaser signature of the LOA is an integral part of the acceptance.

b. LOA payment schedules are estimates, for planning purposes. DFAS-ADY/DE will request payment in accordance with the payment schedule unless DoD costs, including 90-day forecasted requirements, exceed amounts required by the payment schedule. When this occurs, the U.S. will use its best efforts to provide a new schedule via LOA Modification at least 45 days prior to the next payment due date. The Purchaser is required to make payments in accordance with quarterly DD Forms 645 issued by DFAS Denver regardless of the existing payment schedule.

c. The DD Form 645 serves as the bill and statement of account. An FMS Delivery Listing identifying items physically or constructively delivered and services performed during the billing period, will be attached to the DD Form 645. DFAS Denver forwards these forms to the Purchaser within 45 days before payments are due and Purchasers must forward payments in U.S. dollars to the USG in time to meet prescribed due dates. Costs in excess of amounts funded by FMF agreements must be paid by the Purchaser. Questions concerning the content of DD Forms 645 and requests for billing adjustments should be submitted to the Defense Finance and Accounting Service, ATTN: DFAS-ADY/DE, 6760 E. Irvington Place, Denver, CO 80279-2000.

d. The preferred method for forwarding cash payments is by bank wire transfer to the Department of the Treasury account at the Federal Reserve Bank of New York using the standard federal reserve funds transfer format. Wire transfers will be accepted by the Federal Reserve System (FRS) only from banks that are members of the FRS, therefore, non-U.S. banks must go through a U.S. correspondent FRS member bank. The following information is applicable to cash payments:

Wire transfer--

United States Treasury

New York, New York

0210300040

DFAS Denver

Agency Code 00003801

Payment from (country or international organization) for Letter of Offer and Acceptance (Identifier at the top of the first page of the LOA)

BN-Q-SHE
Page 13 of 14 Pages

Figure C5.F4. Letter of Offer and Acceptance (LOA) Information (continued)

Check mailing address-
 DFAS-ADCTA/DE
 PO Box 1736590
 Denver, CO 80217-36590

e. To authorize payments from funds available under FMF loan or grant agreements, the Purchaser may be required to submit a letter of request to the Defense Finance and Accounting Service, ATTN: DFAS-ADY/DE, 6760 E. Irvington Place, Denver, CO 80279-2000. Purchasers should consult applicable FMF agreements for explicit instructions. Questions pertaining to the status of FMF financing and balances should be directed to DSCA (Business Operations Directorate).

f. Payments not received by DFAS-ADY/DE by the due date may be subject to interest charges as outlined in paragraph 4.4.8 of the LOA Standard Terms and Conditions.

g. The values on the LOA are estimates. The final amount will be equal to the cost to the USG. When deliveries are made and known costs are billed and collected, DFAS-ADY/DE will provide a "Final Statement of Account" which will summarize final costs. Excess funds will be available to pay unpaid billings on other statements or distributed as agreed upon between the Purchaser and DSCA (Business Operations Directorate).

h. The Purchaser may cancel this LOA upon request to the implementing agency. An administrative charge that equals one-half of the applicable administrative charge rate times the ordered LOA value, which is earned on LOA acceptance, or the applicable administrative charge rate times the actual LOA value at closure, whichever is higher, may be assessed if this LOA is canceled after implementation.

5. **CHANGES TO THE LOA.** Changes may be initiated by the USG or by requests from the Purchaser. After acceptance of the basic LOA, these changes will take the form of Amendments or Modifications.

a. Amendments encompass changes in scope, such as those which affect the type or number of significant items to be provided. Amendments require acceptance by the USG and the Purchaser in the same manner as the original LOA.

b. Modifications include changes that do not constitute a change in scope, such as increases or decreases in estimated costs or delivery schedule changes. Modifications require signature only to acknowledge receipt by the Purchaser.

c. When signed, and unless alternate instructions are provided, copies of Amendments and Modifications should be given the same U.S. distribution as the basic LOA.

d. Requests for changes required prior to acceptance by the Purchaser should be submitted to the implementing agency for consideration. See DoD 5105.38-M.

6. **CORRESPONDENCE.** Questions or comments regarding this LOA should identify the Purchaser request reference and the identification assigned by the implementing agency within the Department of Defense.

Figure C5.F5. Instructions for Preparing a Letter of Offer and Acceptance (LOA)

| Instructions for Preparing a Letter of Offer and Acceptance (LOA) | | |
|---|--|---|
| <p>1. <u>Case Identifier</u>. Each case includes a unique case identifier (i.e., XX-X-XXX) composed of the country code, the Implementing Agency code, and a case designator. The case designator is a three-position code assigned by the Implementing Agency. The chart below shows the current first-position letters used by the Implementing Agencies to assign case designators. This chart is for information purposes only and does not mandate use of these first-position letters. Case designations are the responsibility of the Implementing Agency.</p> | | |
| U.S. Army | U.S. Navy | U.S. Air Force |
| <p>B Repair Parts</p> <p>G SELPO/Communications Security</p> <p>H Construction (Corps of Engineers)</p> <p>J SDAF</p> <p>K Foreign Military Sales Order (FMSO) I and II</p> <p>M Medical (U.S. Army Medical Materiel Agency)</p> <p>N Coproduction</p> <p>O Training (TRADOC)</p> <p>P Planning</p> <p>Q Materiel/Services (from U.S. activities located in Europe)</p> <p>S Materiel/Services (from U.S. Army Security Assistance Agency – Latin America)</p> <p>T Publications</p> <p>U-Z Materiel/Services provided from various AMCOM Materiel Readiness Commands (including but not limited to system package sales, munitions, spare parts, equipment, technical services, maintenance, etc.)</p> | <p>A Ammunition and Other Explosives</p> <p>B-C Individual Spares and Components</p> <p>G Technical and Engineering Services</p> <p>H-J Direct Requisitioning Procedures</p> <p>K FMSO (KA or KS – FMSO I and KB-KR or KT-KW – FMSO II)</p> <p>L Major End Items (components and equipment)</p> <p>M Repair and Return</p> <p>P Cartridge Actuated Devices (CAD), Propellant Actuated Devices (PAD), Aircrew Escape Propulsion Systems (AEPS)</p> <p>R Open End Requisitioning Procedures</p> <p>S Weapon System Sale (Ship or Aircraft)</p> <p>T Training</p> <p>Z Leases</p> | <p>A Munitions (AFLC)</p> <p>B Munitions (Non-AFLC Managed)</p> <p>C CAD/PAD</p> <p>D Communication/ Electronic System Sale</p> <p>E Equipment</p> <p>F Training Films & Film Strips</p> <p>G AFLC Services</p> <p>H Transportation, PC&H Support</p> <p>J Aircraft Ferry</p> <p>K FMSO (KA – FMSO I and KB-KW – FMSO II)</p> <p>L Equipment</p> <p>M Maintenance</p> <p>N Special Support</p> <p>O Communications Security (COMSEC)</p> <p>P Publications</p> <p>Q AFLC System Sale</p> <p>R Spares</p> <p>S Aircraft System Sale</p> <p>T Training</p> <p>V Class IV Modifications</p> <p>W Class V Modifications</p> <p>X Special Financial</p> <p>Y USAF System Sale (Missiles, etc.)</p> <p>Z Leases</p> |
| <p>2. <u>Purchaser's Reference</u>. The LOR date, serial number, etc. is entered in the "Based on" field.</p> | | |
| <p>3. <u>Term(s) of Sale</u>. Term(s) of Sale indicate when payments are required and whether the LOA is financed with cash or credit. Chapter 9, Table C9.T8. provides details on the various types. The terms must be recorded on the first page of each LOA. Cases that include multiple sources of funding must list all sources and include a dollar breakout for each credit term used.</p> | | |
| <p>4. <u>DSCA Congressional Notification Transmittal Number</u>. Include the DSCA transmittal number used in the statutory Congressional notification (e.g., Congressional Notification 92-15) when applicable. When multiple notification numbers apply, they must all be listed.</p> | | |

Instructions for Preparing a Letter of Offer and Acceptance (LOA)

5. **Offer Expiration Date (OED).** Each LOA includes an OED indicating the last date on which the purchaser may accept the offer. The OED is normally 85 days (25 days for administrative processing and 60 for country review) from Implementing Agency signature. If the purchaser has less than 60 days for review (e.g. where the price estimates are dependent on contract award by a certain date) this should be explained in a note (see Table C5.T5.). Requests for OEDs longer than 85 days may be considered on a countrywide or case-by-case basis. The purchaser submits these requests to the applicable Implementing Agency. If the Implementing Agency concurs, it endorses the request and forwards it to DSCA for approval. The validity of the data may decrease as the length of time from offer increases. The chart below shows the current country level timeframes that should be used unless an exception is granted.

| Country | Number of Days from Implementing Agency Signature to OED |
|--------------|--|
| Egypt | 115 |
| Germany | 115 |
| Greece | 115 |
| Indonesia | 145 |
| Israel | 115 |
| Italy | 130 |
| Korea | 120 |
| Morocco | 115 |
| Pakistan | 115 |
| Philippines | 145 |
| Portugal | 120 |
| Saudi Arabia | 180 (Air Force cases) 180 (Navy Cases) 140 (Army Cases) 150 (all other cases) |
| Spain | 115 |
| Turkey | 100 |
| Yemen | 115 |
| All Others | 85 |

6. **Item Number.** Each case includes three position numeric case line numbers (e.g., 001, 002, etc.).

7. **Description/Condition Field.** For each line item this field shall include a Generic Code and Military Articles and Services List (MASL) line data, NSN or part number (if applicable), MDE (Y)/non-MDE (N) code, a description of the articles or services, whether the materiel is classified or unclassified, and the condition code (if other than A1 condition) or reference to a note in which the condition is shown. Appendix 4 contains the entire list of Generic Codes. References to other information within the LOA may also be included, e.g., for weapon systems, the reference may relate to an attachment or note of the LOA that includes more descriptive information.

The LOA shall contain a separate line for each article with a MASL line that is measured in units (i.e., unit of issue "EA"). Any MDE items shall be listed separately on the LOA---they may not be "buried" within a line item for Non-MDE equipment. For LOAs with more than one significant article or service, lines are listed in order from most to least substantial. After the major items, the remaining lines are in order by generic code. The purpose of this order is for ease of reading. If there are compelling reasons for listing the lines in a different order, the Implementing Agency may decide to do so on a case-by-case basis.

Sublines may be used to the extent they are compatible with MASL breakout and reporting by generic code. Sublines are identified with a lower case alpha character in this field.

8. **Quantity, Unit of Issue, and Unit and Total Costs.** This information is entered, as applicable. Total costs for each line are always in whole dollars. See DoD 7000-14.R (reference (o)), Volume 15, Chapter 7 for information on how to price.

9. **SC/MOS/TA or Notes.** This column includes the supply code (also referred to as the Source of Supply (SOS) code), the availability (estimated number of months from acceptance to when items are available), Type of Assistance (TA) code, and training notes. These terms are defined in the LOA Information attached to each LOA. See Figure C5.F4.

| Instructions for Preparing a Letter of Offer and Acceptance (LOA) | |
|---|--|
| 10. <u>Offer Release Code (ORC)</u> . This code specifies notification requirements prior to shipment and shall be compatible with the Delivery Term Code. See Figure C5.F4. for a complete list of ORCs. More than one code may apply for each line item. | |
| 11. <u>Delivery Term Code (DTC)</u> . This code specifies who is responsible for transportation and how far items are transported. The percentage associated with this code is used to compute the transportation charges in Block 11. See Figure C5.F4. for a complete list of DTCs. More than one code may apply for each line item although it is recommended that different lines/sublines be used to facilitate different computations. | |
| 12. <u>Charges on the LOA</u> . Chapter 9 and DoD 7000-14.R (reference (o)), Volume 15, Chapter 7 identify specific pricing policies for FMS cases. The LOA includes a Net Estimated Cost that represents the total of all line items on the case. Separate entries identify Packing, Crating, and Handling (PC&H), Administrative, Transportation, or other accessorial charges that are included. These figures are added to the Net Estimated Cost to provide a Total Estimated Cost. With the exception of the CAS and administrative surcharge, the percentage rate used for determining accessorial costs should not be indicated in the LOA. A note is included indicating the percentage of CAS and administrative surcharges that are applied against each line item (see Table C5.T5.). When calculating the administrative surcharge, if the calculated amount is less than \$15,000, a Small Case Management Line (SCML) must be added as a line item on the case to recover the difference between the calculated administrative surcharge and \$15,000. See paragraph C9.4.7. for more information on the SCML. | |
| 13. <u>Estimated Payment Schedule</u> . Unless the initial deposit constitutes the total value of the LOA, each LOA shall include a payment schedule. This payment schedule shows the calendar dates when each payment is required and the amount due on each calendar date. The total of these amounts is equal to the amount reflected on the LOA “Total Estimated Cost” line. See Chapter 9, section C9.9. for more information on payment schedules. | |
| 14. <u>Ordering of LOA Notes</u> . Notes should be included to provide detailed information about what is being sold. Table C5.T5. provides information on mandatory notes. To ensure consistency, notes should be included in the following order. | |
| Order | Description |
| 1 | Line item description notes. Each line should have a separate item description note. The sample LOA in Figure C5.F2. has five lines so there are five item description notes. If all line item description information fits beneath the MASL description, a line item description note is not required. If any one line item requires a line item description note, a line item description note shall be included for each line item. |
| 2 | Case unique notes, e.g., description of the system, any purchaser responsibilities. |
| 3 | Mandatory notes unique to the system being sold, e.g., MANPADS, COMSEC, and Anthrax Vaccine. |
| 4 | Notes regarding waivers, e.g., CAS, NC, Administrative Surcharge, etc. |
| 5 | Standard notes required on all cases, e.g., Administrative Surcharge, CAS, NC, Unauthorized Use, Anti-Tampering, Missile Technology Control Regime (MTCR), Offsets, Accessorial Charges. The Administrative Surcharge note should be the last note on the LOA. |

C5.4.8.2. LOA Notes/Supplemental Information. Standard Terms and Conditions must be supplemented with additional items or notes for each offer in order to make obligations clear. Notes in LOAs provide more detailed information concerning items or services being offered. When LOAs are prepared before details are known, notes include general coverage of this information and an estimate of when specific information on these topics can be provided to the purchaser. These notes may be shared in advance with the purchaser to ensure any purchaser-unique requirements are accommodated. Deviations from the LOR, extraordinary reservations concerning the price quoted, and the extent to which either the price or availability is dependent on action to be taken by the USG (e.g., selection of equipment for U.S. Forces) are examples

where further explanation should be included. Advice should be obtained from the Implementing Agency legal office when special circumstances require an expansion of standard or supplemental indemnity clauses included in this Manual. Table C5.T5. lists the notes that should be included in LOAs as indicated. The “Note Usage” column of this table is intended to show when the note should be included on an LOA, Amendment, and Modification. This column is NOT intended to show when an Amendment or a Modification should be used. See Chapter 6, section C6.7. for information on determining which document is appropriate. See Figure C5.F5., #14, for guidance on the ordering of notes within an LOA.

C5.4.8.3. Combining Requirements. LOAs for major systems or end items should include supporting items and services vice negotiating separate LOAs for these items and/or services.

C5.4.8.4. Estimated Delivery Schedule. The MOS (months) entry on the LOA provides the estimated lead-time from the LOA acceptance date to the delivery date of the materiel or to the dates when services are provided. A schedule of estimated in-country or CONUS equipment deliveries by month is provided for major end items. When the purchaser’s request or program schedules require that items not be delivered or services not be performed earlier than a specified date, this must be stated in the LOA notes.

C5.4.8.5. Permanent Change of Station (PCS) Costs. The Implementing Agency notifies the SAO by message of requirements for assignment of PCS (but not TDY) personnel to the purchaser country, including projected start date and duration, number by rank or grade and specialty, and in-country location. The DSCA (Operations Directorate), the Combatant Command, Secretary of State (Resource Management (RM) and PM/RSAT), and the U.S. Embassy are information addressees. The SAO coordinates with the U.S. Chief of Mission and reports PCS personnel support cost data, as well as obstacles to their acceptance or support, to the Implementing Agency. The Implementing Agency includes PCS personnel support costs in the LOA and advises of the PCS requirement and of any support problems in the cover letter when the LOA is transmitted to DSCA for countersignature. LOAs that include PCS or TDY personnel should specify to the extent known:

C5.4.8.5.1. The number of personnel who will perform the task.

C5.4.8.5.2. Planned dates of arrival and departure.

C5.4.8.5.3. In-country destination and home station.

C5.4.8.5.4. Extent of in-country travel required.

Table C5.T5. Letter of Offer and Acceptance (LOA) Notes

| Note Name | Note Usage* | Note Text |
|--|--|--|
| Accessorial Charges | Mandatory for LOAs that include accessorial charges (e.g., PC&H, transportation). Mandatory for Amendments and Modifications even if the Accessorial Charges are not affected by the changes being made. See Chapter 9, section C9.5. | <p>“A [insert type of charge] charge has been applied to lines [insert applicable line numbers].”</p> <p>Note: Repeat this sentence as needed for each separate charge. All of the accessorial charges may be included in a single note with each charge listed separately within the note. For example:</p> <p>a. A transportation charge has been applied to lines 003 and 005. b. A PC&H charge has been applied to lines 001 and 052.</p> |
| Administrative Surcharge | Mandatory for LOAs (including Pseudo LOAs) that include administrative surcharges. C5.1.1. Mandatory for Amendments and Modifications even if the administrative surcharges are not affected by the changes being made. See Chapter 9, section C9.5. | <p>“An administrative surcharge of 3.8% has been applied to lines [insert applicable line numbers].”</p> <p>And/or</p> <p>“An administrative surcharge of 2.5% has been applied to lines [insert applicable line numbers].”</p> <p>And/or</p> <p>“An administrative surcharge of 3% has been applied to lines [insert applicable line numbers].”</p> <p>And/or</p> <p>“An administrative surcharge of 5% has been applied to [insert applicable line numbers].”</p> <p>And/or</p> <p>“An administrative surcharge has not been applied to lines [include applicable line numbers].”</p> <p>Only include the percentages that are included on the case.</p> |
| Administrative Surcharge Waiver - NAMS | Mandatory for NAMS LOAs that have waived administrative surcharges. Mandatory for Amendments and Modifications even if the administrative surcharges are not affected by the changes being made. See Chapter 9, subparagraph C9.6.1.2. | <p>“This LOA is in support of [insert title of the weapon system partnership agreement or NATO/SHAPE project]. Administrative charges, to include any Small Case Management Line (SCML) value, waived on this LOA will be reimbursed to the FMS Admin Account from Program 10 funds controlled by the U.S. Mission to NATO, [insert reference describing U.S. Mission to NATO documentation]. Administrative charges are waived by the Director, DSCA, under the provisions of Section 21(e)(3)(A) of the AECA.”</p> |
| Advanced Medium-Range Air-to-Air Missiles (AMRAAM) Classified Defense Articles | Mandatory for LOAs that include AMRAAM missiles and support equipment. Mandatory for Amendments and Modifications that add AMRAAM missiles and support equipment. See Chapter 8, paragraph C8.3.6. | <p>1. The Purchaser agrees to adhere to the security requirements associated with the Advanced Medium Air-to-Air Missile (AMRAAM) as outlined in the following paragraphs. The Purchaser agrees to perform inventory checks and allow United States Government (USG) inventory verifications.</p> <p>2. The AMRAAM shall be stored in facilities that are at least equivalent in strength to U.S. Air Force (USAF) requirements. Specific requirements for storage shall be agreed upon and met prior to delivery of the missile system. USG representatives shall be allowed to verify security measures and procedures prior to the delivery of AMRAAMs.</p> |

| Note Name | Note Usage* | Note Text |
|-----------|-------------|---|
| | | <p><u>a. Physical Security/Access Controls:</u> Perimeter fencing, lighting for exterior doors and along perimeter barriers, doors, locks, keys, alarms, and surveillance will be in accordance with USG requirements. AMRAAM missiles and components will be stored in structures in which all entrances, exits, or other openings like ventilation systems are physically guarded or alarmed. The standards will at least meet the following:</p> <p>(1) Magazines. Reinforced concrete, arch type, earth covered where construction is at least equivalent in strength to the requirements of Chapter 5, DoD 6055.9-STD, "Ammunition and Explosive Safety Standards," October 2004, will be used for storage (standards of which will be provided to the purchaser).</p> <p>(2) Lighting. Lighting will be provided for exterior doors and along perimeter barriers. Security lighting requirements will conform to the ammunition and safety requirements (standards will be provided to the purchaser).</p> <p>(3) Doors, Locks, and Keys. Exterior doors will be class five steel vault doors secured by two key-operated high security padlocks and a high security shrouded hasp. Keys will be secured separately to ensure effective two-man control of access (i.e., two authorized persons must be present to enter). Use of a master or multiple key system is prohibited.</p> <p>(4) Fencing. Fencing will be six foot (minimum) steel chain link with a one-foot overhang mounted on steel or reinforced concrete posts over firm base. Clear zones will be established 30 feet inside and 12 feet outside the perimeter.</p> <p><u>b. Inventory and Accountability Documentation:</u> The Purchaser agrees that all AMRAAM will be 100% inventoried (missile to serial number) on a semi-annual basis. Purchaser will have procedures in place that provide a continuous accounting of missile receipt, transfer, storage, shipment, and/or destruction/demilitarization. Inventory and accountability documentation maintained by the Purchaser shall be retained throughout the period of ownership and will be made available for review upon USG request.</p> <p><u>c. Storage of Hardware and Technical Data:</u> Storage of AMRAAM hardware and technical data will meet U.S. standards for safeguarding the missile. The Purchaser will maintain strict accountability records on all classified information provided by the USG related to AMRAAM missiles including extracts and copies. These records will include documentary evidence of any AMRAAMs that are lost or destroyed. Such records shall, to the extent possible, be centralized.</p> <p>3. The Purchaser will report immediately to Security Assistance Organization or other appropriate USG representative any allegations, confirmed or unconfirmed, of AMRAAM missile hardware, technology or software released, or compromised to unauthorized nationals, third country nationals, or a foreign Government. The Purchaser will also report any allegation, report, or evidence of unauthorized attempts to collect information on the AMRAAM Program.</p> <p>4. Military or civilian employees of the Purchaser at military</p> |

| Note Name | Note Usage* | Note Text |
|-------------------|--|--|
| | | <p>establishments will accomplish operational and intermediate level maintenance. Third-country nationals, industries or their representatives will accomplish no maintenance functions unless approved in writing by the USG.</p> <p>5. Prior to the delivery of the missiles, the USG will conduct an in-country site survey of all facilities of the Purchaser designated for storage of the AMRAAM Weapon System, that includes the missile and all support equipment such as loaders, trailers, and cable harnesses. The site survey team recommendation will be reported to the appropriate organization identified by the Purchaser in accordance with DoD 5105.38-M, Security Assistance Management Manual.</p> <p>6. The USG will provide to the Purchaser a security checklist and serial numbers that will be referenced during the initial site survey and throughout the life of the AMRAAM Weapon System. The checklist is used to indicate the integrity of security measures in place for AMRAAM storage. Deficiencies identified during the initial site survey must be corrected prior to any AMRAAM deliveries. The Purchaser agrees to adhere to security requirements associated with the AMRAAM system for the life cycle of the systems.</p> <p>7. The scope of the review will include but not limited to, an inventory of missiles listed in this offer by serial number, a review of security controls and procedures, inventory and accountability documentation, distribution of assets (i.e. a plan for in-country movement or plan for repair and return), transportation, access controls, storage of hardware and technical data.</p> <p>8. Transportation of the AMRAAM will meet U.S. standards for safeguarding classified material in transit. The transportation plan must be coordinated and approved by Air Force Material Command Security Office prior to delivery of the AMRAAM to Purchaser.</p> <p>9. The purchaser will obtain USG disposition instructions that either direct transporting AMRAAM missile sections back to the USG or another designated staging area, and/or comprehensive guidance on demilitarization/ disposal management for in-country incineration. The USG disposition instructions indicate parties in the USG that must be contacted prior to any demilitarization/ disposal effort.</p> |
| Aircraft Ferrying | <p>Mandatory for LOAs that involve ferrying of aircraft.</p> <p>Mandatory for Amendments and Modifications that add Aircraft Ferrying to the case.</p> <p>See Chapter 7, paragraph C7.5.4.</p> | <p>“A. The USG will provide for ferrying of aircraft to point of delivery specified in this LOA.</p> <p>*B. In order to carry out the purpose of this LOA, the USG will accept title to the aircraft from the contractor, and title to the aircraft will remain with the USG until arrival at the point of delivery, at which time title passes to the purchaser.</p> <p>*C. The aircraft will be marked with appropriate USG markings. The purchaser is liable for the cost of placing such markings on the aircraft and is responsible for removing such markings upon passage of title to the purchaser.</p> <p>D. The USG will not be subject to or held liable for any import fees, duties, or other charges levied by the purchaser.</p> <p>E. Date of delivery to destination will be contingent upon the receipt of necessary overflight and other clearances.</p> |

| Note Name | Note Usage* | Note Text |
|---------------------------------|--|--|
| | | <p>F. The purchaser is liable for all enroute costs including, but not limited to, any maintenance required to ensure that the aircraft are in a safe condition, in accordance with current USG regulations, prior to flight.</p> <p>G. It is agreed that there will normally be no USG/purchaser splits in crews. Any USG/purchaser split in crew composition must be approved by _____ based upon a request submitted by the purchaser setting forth the reasons for the request, the desired crew composition, and the aircraft qualifications of proposed crew members of the purchaser. If split crews are used, the aircraft commander must be an officer of the USG who will have command and control over the aircraft. If more than one aircraft is being ferried, the designated flight leader will be an officer of the USG and will have command and control over all aircraft.”</p> <p>* When the USG is to ferry purchaser-owned aircraft, replace B. and C. above with the following:</p> <p>“B. In order to carry out the purpose of this LOA, the purchaser grants the USG possession of the aircraft. The title to the aircraft will remain with the purchaser.</p> <p>C. The aircraft will be marked with appropriate USG markings. The purchaser is liable for the cost of placing such markings on the aircraft and is responsible for removing such markings.”</p> |
| Ammunition and Other Explosives | <p>Mandatory for LOAs that include ammunition or explosives.</p> <p>Mandatory for Amendments and Modifications that add ammunition or explosives to the case.</p> <p>See Chapter 7, section C7.17.</p> | <p>“The USG is a self-insurer and, in this connection, your attention is invited to Standard Terms and Conditions 1.2 and 3.1. The Department of Defense shall employ the same inspection procedures for ammunition and other explosives as would be used in the procurement of these types of items for itself. Lot production of ammunition and other explosives, however, carries risks associated with the items’ resultant performance. This risk is assumed by the USG in procurement for its own use, and this risk is also assumed by the purchaser in procurement for its use under this Offer. Accordingly, financial restitution will not be made for claims made on SF 364 Supply Discrepancy Report (SDR) (see Standard Condition 5.4) for deficiencies pertaining to these items unless such claims involve damage due to USG actions with respect to compliance with applicable inspection criteria and procedures, or USG actions with respect to packing, crating, handling, or transportation, or unless the USG can obtain equal restitution from its contractor.”</p> |
| Anthrax Vaccine | <p>Mandatory for LOAs selling anthrax vaccine.</p> <p>Mandatory for Amendments and Modifications that add anthrax vaccine to the case.</p> | <p>“The purchaser agrees the U.S. Government will not incur liability for adverse reactions, morbidity, mortality, or any other actual or possible consequential damages resulting from use, storage, or handling of anthrax vaccine by the purchaser, to include acts or omissions of its officials, agents, or employees. The purchaser further agrees to indemnify and hold harmless the U.S. Government for any and all liability in the event liability is incurred.”</p> |
| Anti-Tamper (AT) Measures | Mandatory for LOAs that include any materiel (not applicable to services | <p>“The United States Government (USG) may incorporate Anti-Tamper (AT) protection into weapon systems and components that contain Critical Program Information (CPI). The AT protection</p> |

| Note Name | Note Usage* | Note Text |
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| | LOAs). Mandatory for Amendments and Modifications that add materiel to a case that previously only included services. | will not impact operations, maintenance, or logistics provided that all terms delineated in the system technical documentation are followed.” |
| Associated Lease | Mandatory for LOAs that are in support of a lease. Mandatory for Amendments and Modifications that add lease support to the case. See Chapter 11, section C11.10. | “This case is in support of lease [insert lease designator XX-X-XXX].” |
| Authority for Sale – FAA, Section 607 | Mandatory for Pseudo LOAs under the authority of FAA, section 607. See Chapter 11, section C11.6. | “This sale is made under the authority of the U.S. Foreign Assistance Act (FAA) of 1961 and the Determination hereunder, a copy of which is attached to this Offer and Acceptance. Any reference in this Letter of Offer and Acceptance to the United States Arms Export Control Act, to defense articles, and to defense services shall be construed instead to be a reference to FAA, section 607 and the Determination hereunder. All other terms, conditions, and procedures under this Offer and Acceptance apply to this transaction.” |
| Authority for Sale – FAA, Section 632 | Mandatory for Pseudo LOAs under the authority of FAA, section 632. See Chapter 11, section C11.7. | “This sale is made under the authority of section 632 of the United States Foreign Assistance Act (FAA) of 1961. Any reference in this Letter of Offer and Acceptance to the United States Arms Export Control Act, to defense articles, and to defense services shall be construed instead to be a reference to FAA, section 632.” |
| Authority for Sale – NDAA, Section 1004/1033 | Mandatory for Pseudo LOAs under the authority of NDAA, section 1004/1033. See Chapter 11, section C11.3. | “This sale is made under the authority of [insert: Section 1004 of the 1991 National Defense Authorization Act, (Public Law 101-510) or Section 1033 of the 1998 National Defense Authorization Act (Public Law 105-85)]. Any reference in this Letter of Offer and Acceptance to the United States Arms Export Control Act, to defense articles, and to defense services shall be construed instead to be a reference to NDAA, Section [insert 1004 or 1033].” |
| Category III Missiles (Stand-off Land Attack Missile-Expanded Response (SLAM-ER), Air Intercept Missile-9X (AIM-9X), and Harpoon Block II) | Mandatory for LOAs that include, SLAM-ER, AIM-9X, Harpoon Block II Missiles, retrofit kits and support equipment. Mandatory for Amendments and Modifications that add SLAM-ER AIM-9X, Harpoon Block II missiles, retrofit kits, and support equipment. See Chapter 8, paragraph C8.3.7. | 1. The [insert missile name] weapon system is accorded Category III protection as addressed in Department of Defense (DoD) 5100.76-M (current revision), “Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.” [For <u>AIM 9X only insert</u> : The AIM-9X subsections, specifically, the seeker/guidance section, target detector, and warhead, are accorded Category II storage protection with an intrusion detection system (IDS)/24-hour armed guard or are continuously manned or under constant surveillance in such a manner that unauthorized entry into and around the storage structures can be detected. The AIM-9X end item is accorded Category III storage protection with intrusion detection system/alarm system or 24-hour guard. Specific requirements shall be documented and agreed upon during the site visit referenced in paragraph 6 of this note and implemented prior to delivery of the missile system.] This includes the missile and all specific support equipment, such as loaders, trailers, and cable harnesses. Specific requirements shall be documented and agreed |

| Note Name | Note Usage* | Note Text |
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| | | <p>upon during the site visit referenced in paragraph 6 and implemented prior to delivery of the missile system. The Purchaser agrees to adhere to the security requirements as outlined in the following paragraphs. The Purchaser agrees to perform inventory checks and allow United States Government (USG) inventory verifications.</p> <p>2. The weapon system shall be stored in facilities that are at least equivalent in strength to USG requirements. Specific requirements for storage shall be agreed upon and met prior to delivery of the missile system. USG representatives shall be allowed to verify security measures and procedures prior to the delivery of weapon system.</p> <p>a. <u>Inventory and Accountability Documentation:</u> Purchaser will have procedures in place that provide a continuous accounting of missile receipt, transfer, storage, shipment, and/or destruction/demilitarization. The Purchaser agrees to inventory 100% of the missiles on this LOA (missile to serial number) on a monthly basis. The USG will be permitted, at its discretion, to conduct an assessment of accountability measures and, if required, inventory 100% of all missiles transferred under this LOA. Inventory and accountability documentation maintained by the Purchaser shall be retained throughout the period of ownership and will be made available for review upon USG request. Purchaser will immediately notify the USG (through the Security Assistance Organization (SAO) to DSCA) of any missile expenditures, compromises, or losses and provide necessary assistance if the USG desires to initiate recovery operations.</p> <p>b. <u>Storage of Hardware and Technical Data:</u> Storage of missile hardware and technical data will meet U.S. standards for safeguarding the missile. The Purchaser will maintain strict accountability records on all classified information provided by the USG related to the missiles including extracts and copies. These records will include documentary evidence of any weapon systems or components that are lost or destroyed. Such records shall, to the extent possible, be centralized.</p> <p>3. The Purchaser will report immediately to the SAO or other appropriate USG representative any allegations, confirmed or unconfirmed, of missile hardware, technology or software released, or compromised to unauthorized nationals, third country nationals, or a foreign government. The Purchaser will also report any allegation, report, or evidence of unauthorized attempts to collect information on the missile program.</p> <p>4. <u>Operational and Intermediate Level Maintenance.</u> Military or civilian employees of the Purchaser at military establishments will accomplish operational and intermediate level maintenance. Third-country nationals, industries or their representatives cannot perform maintenance functions unless approved in writing by the USG. [For AIM 9X only insert: Upon approval by the USG, the Purchaser's industry access to AIM-9X will be limited to oral and visual information necessary to integrate the AIM-9X on the Purchaser's aircraft. A list of the Purchaser's industry personnel authorized access to AIM-9X will be maintained</p> |

| Note Name | Note Usage* | Note Text |
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| | | <p>by the Purchaser and a copy of such list will be provided to the USG, as required.]</p> <p>5. <u>Depot Level Maintenance</u>. Missiles or subcomponents that require depot level repair will be transported to designated depot level repair facilities in the United States under proper security procedures unless the USG specifically authorizes the Purchaser to accomplish Depot Level maintenance.</p> <p>6. <u>Site Survey</u>: In accordance with the Security Assistance Management Manual, Chapter 8, prior to the delivery of the missiles, the USG will conduct an in-country site survey of the physical security measures at all facilities of the Purchaser designated for storage or maintenance of the weapon system. This includes the missile and all support equipment such as loaders, trailers, and cable harnesses.</p> <ul style="list-style-type: none"> a. The USG will provide to the Purchaser a security checklist and serial numbers that should be referenced during the site survey and throughout the life of the weapon system. The checklist is used to indicate that the integrity of security measures in place for weapon system maintenance and storage will insure the same level of security protection as the USG. b. Deficiencies identified during the site survey must be corrected prior to any weapon system deliveries. c. The Purchaser agrees to adhere to security requirements associated with the weapon system for the life cycle of the systems. The Purchaser agrees to allow USG verification of security arrangements for the protection of the weapon system on both a scheduled and unscheduled basis. <p>7. <u>End Use Monitoring</u>: The purchaser understands that this system has been designated for Enhanced End Use Monitoring. This will include, but not be limited to, a USG inventory of missiles listed in this offer by serial number, and a USG review of security controls and procedures, inventory and accountability documentation, distribution of assets (i.e., a plan for in-country movement) or plan for repair and return, transportation, access controls, storage of hardware and technical data.</p> <p>8. Transportation of the weapon system will meet U.S. standards for safeguarding classified material in transit. The transportation plan must be coordinated and approved by [insert appropriate office] prior to delivery of the weapon system to the Purchaser.</p> <p>9. The purchaser will obtain USG disposition instructions that either direct transporting missile sections back to the USG or another designated staging area, and/or provide comprehensive guidance on demilitarization/disposal management for in-country incineration. The USG disposition instructions indicate parties in the USG that must be contacted prior to any demilitarization/disposal effort.</p> |
| Cargo Preference Act | Mandatory for LOAs when the term of sale is FMS Credit (Non-Repayable) and/or for LOAs that | “All items transferred under Section 516 of the FAA or purchased with Foreign Military Financing (FMF) Credit (Non-Repayable) that are transported by ocean carriers must comply with the U.S. Cargo Preference Act. Recipient countries must use U.S. flag |

[illegible]

| Note Name | Note Usage* | Note Text |
|---|--|---|
| | FMSO I LOAs. | Uniform Materiel Movement and Issue Priority System (UMMIPS). This FMSO I case provides an equity investment for defense articles to support a purchaser's anticipated requirement in the DoD inventory. The Military Department uses this equity investment to procure additional levels of centrally stocked or centrally managed items, in preparation for purchase order. |
| CLSSA - Stock Augmentation | Mandatory for FMSO I LOAs. Mandatory for Amendments and Modifications to FMSO I LOAs | A stock augmentation period is required to establish or re-establish the prerequisite inventories within the U.S. DoD supply system. This period is tied to the procurement lead time for each individual item. As the specific augmentation period for an individual item lapses, orders received from the purchaser for each item under the corresponding FMSO II case(s) can be filled from stock. An augmentation period does not apply for Defense Logistics Agency (DLA) items. |
| CLSSA - Associated FMSO I LOA | Mandatory for FMSO II LOAs. Mandatory for Amendments and Modifications to FMSO II LOAs. | The associated FMSO I LOA is [insert case designator]. The LOA Standard Terms and Conditions of this LOA apply, as do the terms and procedures established by the Cooperative Logistics Supply Support Arrangement in the associated FMSO I case. In the event of inconsistencies between the LOA and the CLSSA, the LOA governs. |
| CLSSA - Force Activity Designator (FAD) | Mandatory for FMSO II LOAs. Mandatory for Amendments and Modifications to FMSO II LOAs. | Force Activity Designator (FAD) [insert FAD] is assigned to this LOA. FAD [insert FAD] priorities will be assigned to requisitions in accordance with Uniform Materiel Movement and Issue Priority System (UMMIPS) procedures. Requisitions will be for centrally stocked or centrally managed items (identified by National Stock Numbers) required to replenish (not augment) Purchaser's in-country stock levels. |
| CLSSA - Replacement FMSO II LOA | Mandatory for FMSO II LOAs that replace the previous FMSO II LOA. | This FMSO II LOA supersedes the previous FMSO II LOA, [insert case designator]. |
| CLSSA - Supply Exclusions | Mandatory for FMSO II LOAs. Mandatory for Amendments and Modifications to FMSO II LOAs. | Categories of items that cannot be requisitioned under this LOA are: major defense equipment, significant military equipment, excess defense articles, parachutes, explosive ordnance items, commercial items of materiel more readily provided from in-country, controlled medical items, modification kits, ozone depleting substances, technical data packages or other similar documentation that conveys manufacturing process information, publications, tool sets, cryptographic equipment, classified materiel or equipment, or initial spares. |
| CLSSA - Support Availability | Mandatory for FMSO II LOAs. Mandatory for Amendments and Modifications to FMSO II LOAs. | Requirements authorized for requisitioning under this LOA will be accepted as long as funds are available to process them. |
| CLSSA - Requisitioning | Mandatory for FMSO II LOAs. Mandatory for Amendments | All items requisitioned under this CLSSA should be for stock replenishment, as the requirement occurs, and not for initial provisioning, depot rebuild support programs, or the purpose of a one-time stock level increase. Requisitions shall be restricted to those items specifically in support of the weapon systems and |

| Note Name | Note Usage* | Note Text |
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| | and Modifications to FMSO II LOAs. | major end items identified in the FMSO I. Nonrecurring demands and non-programmed requirements can be submitted and/or projected for inclusion in the subsequent renegotiation effort, subject to stock availability. |
| Combined Exercise Support to NATO Countries | Mandatory for LOAs associated with a combined exercise. Mandatory for Amendments and Modifications associated with a combined exercise if the note was previously not included on the LOA. | “This LOA provides defense articles and/or services to the purchaser to support its participation in (insert name of exercise, e.g., Red Flag, Cope Thunder), a combined exercise. Claims arising out of combined exercise activities shall be dealt with under Article VIII of the NATO SOFA.” |
| Communication Security (COMSEC) Equipment End Use Monitoring (EUM) | Mandatory for LOAs that include COMSEC equipment. Mandatory for Amendments and Modifications that include COMSEC equipment. See Chapter 8. | <p>“This LOA provides defense articles that require physical security and accountability as set forth in the following agreements and documents (not all may be applicable).</p> <ol style="list-style-type: none"> 1. Communication Interoperability and Security Memorandum of Agreements (CIS MOAs) between the United States and the purchaser. 2. National Security Agency Publications NAG-14, "Allied COMSEC Material Accounting Manual", and NAG 18, "Safeguarding COMSEC Material and Facilities." 3. NATO Security Agreements including implementing directives and policies promulgated by the NATO Military Committee, NATO C3 Board, NATO Office of Security and other NATO organizations. 4. Bilateral and/or multilateral Communications Security and other security agreements between the United States and the purchaser. <p>The purchaser agrees that upon USG request, the articles and the purchaser's inventory and accountability records will be made available to U.S. representatives for the purpose of conducting a compliance assessment with the requirements in agreements and documents above (not all may be applicable). This assessment will not be a COMSEC account audit and will not include an inspection of keying material.”</p> |
| Communication Security (COMSEC)/Transmission Security (TRANSEC) Devices Sold FMS for Integration into MIDS Terminals | Mandatory for LOAs, Amendments, and Modifications for all sales of COMSEC/TRANSEC devices for the purpose of integration into MIDS terminals sold under a U.S. Direct Commercial Sale. | <p>“At line [insert line item number], this LOA provides for the sale of Communication Security (COMSEC)/Transmission Security (TRANSEC) devices which will be incorporated in Multifunctional Information Distribution System (MIDS) terminals which the Government of [insert name of Government] has contracted to acquire through U.S. commercial channels. The COMSEC/TRANSEC devices for integration into the MIDS terminals must, however, be provided exclusively under this LOA. The COMSEC/TRANSEC devices sold under this LOA may not be purchased through a Direct Commercial Sale.</p> <p>The Foreign Purchaser has identified [insert name of U.S. Contractor] as its integration contractor and has requested in writing that the U.S. Government deliver the COMSEC/TRANSEC devices directly to [insert name of U.S. Contractor] for integration work to be performed at a U.S. location.</p> |

| Note Name | Note Usage* | Note Text |
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| | | <p>The U.S. Government will not deliver the COMSEC/TRANSEC devices to [insert name of U.S. Contractor] unless the following six (6) requirements are met:</p> <ol style="list-style-type: none"> 1. The contractor is a U.S. contractor. 2. Only U.S. contractor personnel who are U.S. citizens may perform the integration work. 3. The work must be performed in the United States. 4. The U.S. contractor provides a copy of the approved export license from the U.S. State Department/Directorate for Defense Trade Controls (DDTC) for export of the MIDS terminals to the Foreign Government Purchaser, to the LOA Implementing Agency. To facilitate export license processing, the application to Department of State/DDTC for an export license for the MIDS terminals should reference this FMS case for the sale of the COMSEC/TRANSEC devices. 5. The Foreign Government Purchaser should specify in the commercial contract with the U.S. Contractor that the contractor may not transfer the COMSEC/TRANSEC devices provided under this LOA to any other party except to the Foreign Government Purchaser, and that the contractor should reference this FMS case in the application to State DDTC for an export license for the MIDS terminals. 6. Any deviation from these procedures will require USG approvals, including from the Department of State." |
| Condition of Items | <p>Mandatory for LOAs if the purchaser desires exclusively new end items of equipment.</p> <p>If items are offered in "as is" condition (no assurance of serviceability), this is stated in the LOA.</p> <p>Mandatory for Amendments and Modifications if the requirement for items to be in a certain condition changes.</p> <p>See Chapter 4, paragraph C4.3.2.</p> | Varies depending on the unique aspects of the case/lines. |
| Congressional Notification – Letter of Intent (LOI) | <p>Mandatory for LOIs if Congressional Notification for the LOA is required but has not yet been completed.</p> <p>See Chapter 5, paragraph C5.5.6 and section C5.6.</p> | <p>"It is understood that United States law requires that the U.S. Congress must be afforded a formal opportunity to review the proposed sale before the sales offer may be issued to the purchaser and that a law may be enacted to prohibit such issuance. The purchaser shall bear the risk that the offer may not be issued for reasons such as enactment of a prohibition."</p> |
| Contingent Fees – Contract Requirements | <p>Mandatory for LOAs for Saudi Arabia, Australia, Egypt, Greece, Israel, Japan, Jordan, Korea, Kuwait, Pakistan, Philippines, Taiwan,</p> | <p>For Saudi Arabia</p> <p>"All U.S. Government contracts resulting from this Letter of Offer and Acceptance shall contain one of the following provisions, unless laws of the Kingdom of Saudi Arabia call for prescribing sales commissions or agents' fees, and payment thereof is approved</p> |

| Note Name | Note Usage* | Note Text |
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| | <p>Thailand, Turkey, and the Venezuelan Air Force when the LOA includes procurement lines.</p> <p>Mandatory for Amendments and Modifications for these countries that add procurement lines to a case that previously included only items from stock.</p> <p>See Chapter 6, paragraph C6.3.7.</p> | <p>in writing by the purchaser before contract award:</p> <p>a. For firm fixed-price contracts or fixed-price contracts with economic price adjustment:</p> <p>The contractor certifies that the contract price (including any subcontracts awarded hereunder) does not include any direct or indirect costs of sales commissions or fees for contractor sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to [insert country].</p> <p>b. For all other types of contracts:</p> <p>Notwithstanding any other provision of this contract, any direct or indirect costs of sales commissions or fees for contractor (or subcontractor) sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to [insert country] shall be considered as an unallowable item of cost under this contract.”</p> <p>For Australia, Egypt, Greece, Israel, Japan, Jordan, Korea (Republic of), Kuwait, Pakistan, Philippines, Taiwan, Thailand, Turkey, and the Venezuelan Air Force:</p> <p>“All U.S. Government contracts resulting from this Letter of Offer and Acceptance shall contain one of the following provisions, unless the sales commission and fee have been identified and payment thereof approved in writing by [insert country] before contract award:</p> <p>a. For firm fixed-price contracts or fixed-price contracts with economic price adjustment:</p> <p>The contractor certifies that the contract price (including any subcontracts awarded hereunder) does not include any direct or indirect costs of sales commissions or fees for contractor sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to [insert country].</p> <p>b. For all other types of contracts:</p> <p>Notwithstanding any other provision of this contract, any direct or indirect costs of sales commissions or fees for contractor (or subcontractor) sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to [insert country] shall be considered as an unallowable item of cost under this contract.”</p> |

| Note Name | Note Usage* | Note Text |
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| Contingent Fees | Mandatory for LOAs when contingent fees (including agent's fees and sales commissions) are included Mandatory for Amendments and Modifications that add contingent fees (including agent's fees and sales commissions) to the case. See Chapter 6, paragraph C6.3.7. | Varies depending on the unique aspects of the cases/lines. |
| Contract Administration Services (CAS) Surcharge | Mandatory for LOAs when any lines use a Source of Supply of "X" or "P" (including Pseudo LOAs). Mandatory for Amendments and Modifications when any lines use a Source of Supply of "X" or "P" (including Pseudo LOAs) even if the CAS is not affected by the changes being made. See Chapter 9, section C9.5. | For FMS cases not involving Overseas CAS: "For any lines on this LOA document with a Source of Supply of 'X' or 'P,' the Contract Administration Services (CAS) surcharge rates apply: for Contract Administration; ____%; for Quality Assurance and Inspection, ____%; and for Contract Audit, ____%." For FMS cases involving Overseas CAS: "For any lines on this LOA document with a Source of Supply of 'X' or 'P,' the Contract Administrative Services (CAS) surcharge rates apply: for Contract Administration; ____%; for Quality Assurance and Inspection, ____%; for Contract Audit, ____%; and for Overseas CAS, ____%." If a CAS waiver does apply, either note should be expanded to include the following statement: "A waiver is authorized for the following CAS components: [fill in those that apply]." |
| Coproduction Reporting/ Validation | Mandatory for LOAs that include coproduction. Mandatory for Amendments and Modifications that add coproduction. See Chapter 11, subparagraph C11.9.3.1.3. | "[Insert purchaser] agrees to provide periodic reporting of quantities of defense items produced under this Agreement and will permit U.S. Department of Defense personnel access to Government and contractor facilities, storage sites, and those records necessary to verify production quantities, as well as control of technical data and other implementation requirements of this Agreement. Such access, if requested, will be permitted when mutually convenient, but within a reasonable period of time after the request. Visits will be accomplished under established visit procedures." |
| Design and Construction Services | Mandatory for LOAs that include design and construction services. Mandatory for Amendments and Modifications that add design and construction services. See Chapter 4, paragraph C4.3.5. | "This LOA includes design and construction services offered under the authority of AECA, section 29. The construction agent for this portion of the program is [insert name/organization acting as the construction agent]." |
| End Use – FAA, Section 607 | Mandatory for Pseudo LOAs under the authority of FAA, section 607. See Chapter 11, section C11.6. | "The purchaser and/or benefiting country shall, except as may otherwise be mutually agreed in writing by the USG, use the items sold under this Offer and Acceptance or direct their use by personnel and organizations under its auspices only for purposes authorized." |
| Environmental | Mandatory for LOAs that | "There may be items included in this sale that require special skills |

| Note Name | Note Usage* | Note Text |
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| Hazards | include items that may pose environmental hazards. Mandatory for Amendments and Modifications that add items that may pose environmental hazards. | or equipment for operation, maintenance, or disposal in a manner that will minimize environmental hazards. Purchaser should refer to [insert technical manual or other source data] for details.” |
| End-Use Monitoring (EUM) | Mandatory for all LOA's Mandatory for all Amendments and Modifications f the note was previously not included on the case. See chapter 8. | "Pursuant to the Foreign Assistance Act (FAA), section 505; and the Arms Export Control Act (AECA), section 40A, the USG will be permitted, upon request, to conduct a scheduled inspection and physical inventory of all articles and services transferred under this LOA. Upon request, the inventory and accountability records maintained by the purchaser will be made available to the U.S. personnel conducting this inspection." If an Enhanced EUM item is included in the FMS case, add the following sentence to the end of the note text above: “Enhanced EUM physical security and accountability requirements are annotated in note [insert LOA note number].” |
| Excess Defense Articles (EDA) - Sales: Conditions of Materiel | Mandatory for LOAs that involve EDA. Mandatory for Amendments and Modifications that add EDA items. See Chapter 11, section C11.5. | “Equipment in line items [insert line item numbers] is offered in “as is, where is” condition and may not meet serviceability standards normally prescribed by the U.S. Military for sale to security assistance purchasers. Items may be missing basic issue items and accessories; be in excess of hour/mileage standards; and may not have applicable publications/records. Acceptance of this Letter of Offer and Acceptance (LOA) does not imply or commit the U.S. Government to accept separate requests for rehabilitative services, supply of shortages, future supportability, or training. These services will be provided only if available within the resources of the U.S. Military at the time a request is made by the purchaser and at the purchaser’s expense. Standard Form 364, Supply Discrepancy Report (SDR), cannot be submitted against the equipment in line items [insert line items numbers].” |
| Excess Defense Articles (EDA) - Sales | Mandatory for LOAs that involve EDA. This note should be included at the bottom of the item description for that line (vice in the note pages). Mandatory for Amendments and Modifications when an EDA line item is added or changed. See Chapter 11, section C11.5. | “Excess Defense Articles, Acquisition Value is \$_____.” |
| Excess Defense Articles (EDA) – Services Associated With an EDA Grant Transfer | Mandatory on LOAs when articles, services, and/or training (e.g., PCH&T, publications) are offered in association with EDA grant transfers. Mandatory for Amendments and Modifications that add | “This LOA provides funds for packing, crating, handling and transportation (PCH&T) of the equipment listed in [insert attachment or note number] that is being provided on a grant basis under the Foreign Assistance Act of 1961, section 516, as amended. The equipment listed is offered in “as is, where is” condition and may not meet serviceability standards normally prescribed by the U.S. Military for sale to security assistance purchasers. Items may be missing basic issue items and accessories; be in excess of |

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| | articles, services, and/or training (e.g., PCH&T, publications) in association with EDA grant transfers. See Chapter 11, section C11.5. | hour/mileage standards; and may not have applicable publications/records. Acceptance of this Letter of Offer and Acceptance (LOA) does not imply or commit the U.S. Government to accept separate requests for rehabilitative services, supply of shortages, future supportability, or training. These services will be provided only if available within the resources of the U.S. Military at the time a request is made by the purchaser and at the purchaser's expense. Any Standard Form 364 submitted against this LOA is limited to services provided under the case and cannot be submitted against the materiel listed in [insert attachment or note number]." |
| Excess Defense Articles (EDA) – Storage Charges for Grant EDA | Mandatory for LOAs associated with EDA grant transfers of equipment. Mandatory for Amendments and Modifications of cases associated with EDA grant transfers of equipment that previously did not include this materiel. See Chapter 11, section C11.5. | "If the purchaser does not arrange to remove the materiel listed in [insert attachment or note number] within 60 days after implementation of the LOA, a storage charge will be determined by applying 1.5 percent annually (.125 percent monthly) against the original acquisition value of the materiel. Storage charges will commence with the materiel release order date. These costs will be recouped by adding a storage line to this LOA via modification." |
| Foreign Military Financing (FMF) | Mandatory for LOAs when the purchaser is approved (or anticipated to be approved) for FMF. Mandatory for Amendments and Modifications when the purchaser is approved (or anticipated to be approved) for FMF if the note was previously not included on the case. See Chapter 9, section C9.7.2. | "If the Terms of Sale specify Foreign Military Financing (FMF), the purchaser will pay to the USG, on a dependable undertaking basis, such costs as may be in excess of the amount funded by FMF." |
| Funds Expiration, Purpose, and Availability | Mandatory for Pseudo LOAs under the authority of NDAA, sections 1004/1033 and under the authority of FAA, section 632 when the funds expire. See Chapter 11, subparagraphs C11.3.3.5. and C11.7.3.5. | "The funds associated with this Pseudo LOA are expiring funds and carry the same time, purpose, and availability restrictions associated with the funding source [insert the Appropriation]. Failure to obligate the funds during the period of availability ending on DDMMYYYY will render them unavailable for new obligations." |
| GPS/PPS – Hardware Security | Mandatory for LOAs for Country Groups A, B, and C (as identified in DoD Global Positioning System (GPS) Security Policy (reference (aw)) that include GPS/PPS equipment. Mandatory for Amendments | "In accordance with Department of Defense Global Positioning System (GPS) Security Policy dated March 29, 1999, [insert country] is a member of GPS Country Group [insert A, B, C] and is thereby authorized to purchase the GPS PPS equipment identified in this LOA." |

| Note Name | Note Usage* | Note Text |
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| | and Modifications for Country Groups A, B, and C that add GPS/PPS equipment. | |
| GPS/PPS – Hardware Security | <p>Mandatory for LOAs that include GPS/PPS equipment for Country Group D (as identified in DoD Global Positioning System (GPS) Security Policy (reference (aw)).</p> <p>Mandatory for Amendments and Modifications that add GPS/PPS equipment for Country Group D.</p> | <p>“In accordance with Department of Defense Global Positioning System (GPS) Security Policy dated March 29, 1999, [insert country] is a member of GPS Country Group D and the following security provisions apply:</p> <p>Special LOA Terms and Conditions for GPS PPS Host Application Equipment (HAE)</p> <ol style="list-style-type: none"> 1. Definition: GPS PPS HAE are all applications of electronic products that implement or contain any of the GPS PPS security functions, i.e., selective availability (SA), anti-spoofing (A-S), and associated cryptography. GPS PPS HAE receives and processes the PPS signals transmitted from the GPS satellites. GPS PPS HAE are categorized as standalone, embedded, and integrated. Stand-alone HAE are self-contained GPS receivers that are capable of being operated independently of other systems. Embedded HAE are GPS receiver modules or circuit card assemblies intended to be integrated into other systems. Integrated HAE are enclosed multi-functional or multi-sensor systems that contain embedded GPS receivers. 2. Purchaser is authorized to purchase GPS HAE that have a security design approved by the GPS Joint Program Office as “Unclassified/Controlled” when keyed. 3. Purchaser shall not use or permit the use of any GPS PPS HAE or related technical data, computer software, or components thereof, in any complete rocket system (including ballistic missiles, space launch vehicles, and sounding rockets) and unmanned air vehicle system (including cruise missile systems, target drones and reconnaissance drones) capable of delivering a payload larger than 500kg beyond a range of 300 km without the prior written consent of the United States Government. 4. The purchaser is not authorized to perform maintenance on GPS PPS security devices (the PPS Security Module (PPS-SM), Auxiliary Output Chip (AOC), combined PPS-SA/AOC device, Selective Availability Anti-Spoofing Module (SAASM), or SAASM Code Block (SCB)), equipment subassemblies containing GPS PPS security devices, or related GPS PPS software. If a malfunction of a GPS PPS HAE is isolated to a subassembly containing a GPS PPS security device, the faulty subassembly shall be removed, replaced, and returned to the U.S. Government for repair. If any GPS PPS security device or any subassembly containing a GPS PPS Security device is no longer needed or wanted, it shall be returned to the U.S. Government for destruction. 5. The purchaser shall provide for the protection of GPS PPS security devices from unauthorized access, theft, tampering, or loss. 6. The purchaser is responsible for accountability by quantity for GPS PPS HAE purchased pursuant to this LOA. The purchaser shall account for the GPS PPS HAE by performing equipment inventories at least annually and whenever there is a change in personnel responsible for GPS PPS HAE. Any incident involving |

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| | | <p>unauthorized access to, or tampering with, theft, or loss of, GPS PPS HAE shall be reported to the U.S. GPS Joint Program Office.</p> <p>7. If the purchaser decides to discontinue use of GPS PPS equipment, this LOA shall terminate with respect to GPS PPS equipment and all GPS PPS security devices shall be returned to the U.S. Government.</p> <p>8. This LOA does not include provision for the transfer of GPS/PPS cryptographic hardware and software technology, design, or manufacturing information.”</p> |
| GPS/PPS Security Devices Sold FMS for Integration Into Host Application Equipment | Mandatory for LOAs, Amendments, and Modifications for all sales of GPS/PPS security devices for the purpose of integration into Host Application Equipment sold under a U.S. Direct Commercial Sale. | <p>“Pursuant to the Memorandum of Understanding Number IV Among and Between the Individual Nations of NATO and the United States Concerning the Navstar Global Positioning System, October 28, 1993, the Government of [insert name of Government] may seek to acquire through commercial channels host application equipment (HAE). The PPS security devices for integration into the HAE (by the HAE contractor) must, however, be provided exclusively under this LOA. The PPS security devices and kits sold under this LOA may not be purchased through Direct Commercial Sale.</p> <p>The Foreign Purchaser has identified [insert name of U.S. Contractor] as its integration and HAE contractor and has requested in writing that the U.S. Government deliver the PPS security devices and kits directly to [insert name of U.S. Contractor] for integration work to be performed at a U.S. location.</p> <p>The U.S. Government will not deliver the PPS security devices and kits to [insert name of U.S. Contractor] unless the following six (6) requirements are met:</p> <ol style="list-style-type: none"> 1. The contractor is a U.S. contractor. 2. Only U.S. contractor personnel who are U.S. citizens may perform the integration work. 3. The work must be performed in the United States. 4. The U.S. contractor provides a copy of the approved export license from the U.S. Department of State/DDTC for export of the HAE to the Foreign Government Purchaser, to the LOA Implementing Agency. To facilitate export license processing, the application to Department of State/DDTC for an export license for the HAE should reference this FMS case for the sale of the PPS security devices and kits. 5. The Foreign Government Purchaser should specify in the commercial contract with the U.S. Contractor that the contractor may not transfer the PPS security devices and kits provided under this LOA to any other party except to the Foreign Government Purchaser, and that the contractor should reference this FMS case in the application to the Department of State/DDTC for an export license for the HAE. 6. Any deviation from these procedures will require USG approvals, including from the Department of State.” |
| Hardware Lines Increasing By More Than \$13M | Mandatory for Amendments and Modifications that increase non-MDE hardware lines by more than | “This [amendment or modification] contains no additions to Major Defense Equipment (MDE).” |

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| | <p>\$13M (all line increases combined).</p> <p>This note should be included at the bottom of the item description for the last line on the document (vice in the note pages).</p> | |
| Javelin Physical Security And Accountability Plan | <p>Mandatory for LOAs for sales of Javelin Missile Systems.</p> <p>Mandatory for Amendments and Modifications that add Javelin Missile Systems.</p> <p>See Chapter 8, paragraph C8.3.5.</p> | <p>“Purchaser agrees to adhere to the following security requirements associated with the Javelin Missile System. The Office of the Provost Marshal General, Army Physical Security (DAPM-MPD-PS), U.S. Army may approve modification of specified requirements to meet indigenous conditions.</p> <p>a. Javelin Missile - The Javelin Missile is accorded Category I protection as addressed in Department of Defense (DoD) 5100.76-M, (current revision), “Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.” The Javelin Missile shall be stored in facilities that are at least equivalent in strength to U.S. Army requirements as specified in subparagraph (1), below. The purchaser also agrees to comply with U.S Army specified requirements for lighting, doors, locks, keys, fencing, and surveillance and guard systems. Specific requirements shall be agreed upon and installed prior to delivery of the missile system. U.S. Army representatives shall be allowed to verify security measures and procedures established for implementation of these requirements.</p> <p>(1) Magazines: Reinforced concrete, arch type, earth covered whose construction is at least equivalent in strength to the requirements of DoD 6055.9-STD (current revision), “Ammunition and Explosives Safety Standards” shall be used for storage (standards of which shall be provided to the purchaser).</p> <p>(2) Lighting: Lighting shall be provided for exterior doors and along perimeter barriers. Security lighting requirements shall conform to ammunition and safety requirements of Appendix C, U.S. Army Technical Manual 9-1300-206 (Basic with Changes), (standards of which shall be provided to the purchaser).</p> <p>(3) Doors, Locks and Keys: Exterior doors shall be class five steel vault doors secured by two-key operated high security padlocks and a high security shrouded hasp. Keys shall be secured separately to ensure effective two-man control of access (i.e., two authorized persons must be present to enter). Use of master or multiple keys is prohibited.</p> <p>(4) Fencing: Fencing shall be 6-foot (minimum) steel chain link with 1-foot overhang mounting on steel or reinforced concrete posts over firm base. Clear zones shall be established 30 feet inside and 12 feet outside the perimeter fence (provided there is adequate space).</p> <p>(5) Surveillance and Guard: A full time guard or combination guard force and intrusion detection system (IDS) must be provided. When IDS is not operational, 24-hour guard surveillance is required.</p> <p>(6) Access to Storage Facilities: Two authorized persons shall be required to be present during any activity that affords access to</p> |

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| | | <p>storage facilities containing the Javelin Missile. Lock and key procedures shall be developed to ensure that no individual can be unescorted or have unobserved access to Javelin storage facilities.</p> <p>b. The Javelin Command Launch Unit (CLU) – The purchaser shall ensure that the Javelin CLU is accorded Category III protection as addressed in DoD 5100.76-M (current revision), “Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.” U.S. Army representatives shall be allowed to verify security measures and procedures established for these requirements.</p> <p>c. Accountability:</p> <p>(1) Each month, the purchaser shall perform a 100 percent physical inventory of rounds and CLUs. A 100 percent physical inventory of rounds and CLUs by serial number shall be taken quarterly of weapons issued at the operational unit level. A 100 percent physical inventory of rounds and CLUs by serial number shall be taken semiannually of weapons stored or retained at installation, depot, post, or base level. To ensure verification, two authorized people will conduct all inventories. Rounds expended during peacetime shall be accounted for by serial number.</p> <p>(2) The [insert SAO or name of U.S. Military Office in American Embassy (i.e., ODC, JUSMAG, MILGRP, etc.)] will be permitted to conduct a U.S. inspection and inventory by serial number annually. Inventory and accountability records maintained by the purchaser shall be made available for review upon USG request.</p> <p>d. Transportation: Movement of the Javelin shall meet U.S. standards for safeguarding classified material in transit as specified by the USG in DoD 5100.76-M (current revision), “Physical Security of Sensitive Conventional Arms, Munitions, and Explosives” (standards of which shall be provided to the purchaser) and paragraph i below.</p> <p>e. Access to Hardware and Classified Information:</p> <p>(1) Access to hardware and related classified information shall be limited to military and civilian personnel of the purchasing Government (except for authorized U.S. personnel as specified herein) who have the proper security clearance and who have an established need to know the information in order to perform their duties. Information released shall be limited to that necessary to perform assigned functions/operational responsibility, and, where possible, shall be oral/visual only.</p> <p>(2) Missile maintenance that requires access to the interior of the operational system, beyond that required of the operator, shall be performed under U.S. control.</p> <p>f. Compromise, Loss, Theft, and Unauthorized Use: The purchaser shall report to the U.S. Army by the most expeditious means any instances of compromise, unauthorized use, loss or theft of any Javelin materiel or related information. This shall be followed by a prompt investigation and the results shall be provided to the U.S. Army.</p> <p>g. Third-Party Access: The recipient shall agree that no information on Javelin shall be released to third-country Government, person, or other third party entity without U.S. approval.</p> |

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| | | <p>h. Damaged/Expended Materiel: The U.S. Army shall be notified immediately to determine disposition of damaged Javelin missile rounds. When Javelin missile rounds are expended, the purchaser shall provide certification by serial number to the SAO with verification by a U.S. Army representative whenever possible.</p> <p>i. Conditions of Shipment and Storage for Javelin and Javelin variants: The two principle components of the Javelin missile system, the Command Launch Unit, and the missile in its disposable launch tube shall be stored in separate locations. The two storage locations shall be physically separated sufficiently so that penetration of the security at one sight shall not place the second at risk. The Command Launch Units and the missiles must be shipped and transported in separate vehicles or vessels except when under the conditions of paragraph j below.</p> <p>j. Conditions of Use: The two principle components of the Javelin missile system, the Command Launch Unit, and the missile in its disposable launch tube, may be brought together and assembled under the following circumstances:</p> <p>(1) In the event of hostilities or imminent hostilities.</p> <p>(2) For firing as part of regularly scheduled training; however, only those rounds to be fired will be withdrawn from storage and assembled.</p> <p>(3) For lot testing; however, only rounds to be tested will be withdrawn from storage and assembled.</p> <p>(4) When systems are deployed as part of the point defenses of high-priority installations or activities (e.g., key Government buildings, military headquarters, essential utilities, air defense facilities).</p> <p>k. Demilitarization/Disposal: At the end of their useful life, Javelin missile rounds and CLUs shall be demilitarized or disposed of using an FMS LOA. If done in-country, the SAO must approve the purchaser's plans and ensure compliance with U.S. standards. The purchaser shall use guidance provided in DoD 4160.21-M-1 (current version) or purchase technical assistance from the U.S. Army or the Defense Reutilization and Marketing Service. The transfer of demilitarized Javelin missile rounds or CLUs to a private entity, requires approval of the U.S. Government."</p> |
| Limit of Support | <p>Mandatory for LOAs when an item will not be supported through its remaining service life.</p> <p>Mandatory for Amendments and Modifications that add items that will not be supported through their remaining service life.</p> | Varies depending on the items and type of support. |
| Limit of Support under NDAA, Section 1004 | <p>Mandatory for Pseudo LOAs under the authority of NDAA, section 1004.</p> <p>See Chapter 11, paragraph C11.3.1.</p> | <p>"This Pseudo LOA is limited to the following types of support for counter-narcotics purposes as authorized under section 1004 of the 1991 NDAA, (Public Law 101-510): (1) Maintenance, repair and upgrade of loaned DoD equipment, (2) Maintenance, repair and upgrade of other equipment, (3) Transportation of personnel, including personnel of foreign countries, supplies and equipment</p> |

| Note Name | Note Usage* | Note Text |
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| | | facilitating CN purposes, (4) The establishment (including unspecified minor military construction projects) and operation of bases of operations or training facilities for CN purposes, (5) Counter Drug related training of Law Enforcement Personnel, (6) Detection, Monitoring and Communication, (7) Construction of Roads, Fences and installation of Lighting, (8) Establishment of Command, Control and Computer Networks, (9) Provision of Linguists and intelligence analysis services, (10) Aerial and Ground Reconnaissance.” |
| Limit of Support under NDAA, Section 1033 | Mandatory for Pseudo LOAs under the authority of NDAA, section 1033. See Chapter 11, paragraph C11.3.1. | “This Pseudo LOA is limited to the following types of counter-narcotics support to Colombia and Peru as authorized under section 1033 of the 1998 NDAA (Public Law 105-85): (1) Riverine patrol boats, (2) Non-lethal protective and utility personnel equipment, (3) Non-lethal specialized equipment such as night vision systems, navigation, communications, and photo and radar equipment, (4) Non-lethal components, accessories, attachments, parts, hardware, and software for aircraft or patrol boats, and related repair equipment, (5) Maintenance and repair of equipment that is used for counter-drug activities.” |
| Line Item [Insert Line Item Number] Description | Mandatory for each line on the case unless all line item description information can fit beneath the MASL description. If any one line item requires a Line Item Description note, a Line Item Description note must be included for each line item. See Chapter 5, Figure C5.F5. | Varies – wording must be determined on a line-by-line basis. Wording must include a detailed description of items being sold or services performed. |
| Man-Portable Air Defense Systems | Mandatory for LOAs for sales of MANPADS to NATO, NATO Nations, Japan, Australia, and New Zealand. Mandatory for Amendments and Modifications that add MANPADS to cases for NATO, NATO Nations, Japan, Australia, and New Zealand. See Chapter 8, paragraph C8.3.3. | “Purchaser agrees to adhere to the following additional security requirements associated with [insert appropriate missile/system]. The Office of the Provost Marshal General, Army Physical Security (DAPM-MPD-PS), U.S. Army may approve modification of specified requirements to meet indigenous conditions. a. Physical Security. The [insert appropriate missile] will be stored in magazines that are at least equivalent in strength to U.S. Army requirements as specified in subparagraph (1) below. The purchaser also agrees to comply with U.S. Army specified requirements for lighting, doors, locks, keys, fencing, and surveillance and guard systems. Specific requirements will be agreed upon and installed prior to delivery of the missile system. U.S. Army representatives will be allowed to verify security measures and procedures established for implementation of these requirements. 1. Magazines. Reinforced concrete, arch type, earth covered whose construction is at least equivalent in strength to the requirements of Chapter 5, DoD 6055.9-STD, “Ammunition and Explosive Safety Standards,” July 1984, will be used for storage (standards of which will be provided to the purchaser). 2. Lighting. Lighting will be provided for exterior doors and along |

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| | | <p>perimeter barriers. Security lighting requirements will conform to the ammunition and safety requirements of U.S. Army Technical Manual 9-1300-206, Appendix C (standards of which will be provided to the purchaser).</p> <p>3. Doors, Locks, and Keys. Exterior doors will be class five steel vault doors secured by two key-operated high security padlocks and a high security shrouded hasp. Keys will be secured separately to ensure effective two-man control of access (i.e., two authorized persons must be present to enter). Use of a master or multiple key system is prohibited.</p> <p>4. Fencing. Fencing will be six foot (minimum) steel chain link with a one-foot overhang mounted on steel or reinforced concrete posts over firm base. Clear zones will be established 30 feet inside and 12 feet outside the perimeter fence (provided there is adequate space).</p> <p>5. Surveillance and Guard. A full-time guard force or combination guard force and intrusion detection system (IDS) will be provided. When the IDS is not operational, 24-hour guard surveillance is required.</p> <p>6. Access to Storage Facilities. Two authorized persons will be required to be present during any activity that affords access to storage facilities containing [insert missile/system]. Lock and key procedures will be developed to ensure that no single individual can obtain unescorted or unobserved access to [insert missile/system] storage facilities.</p> <p>b. Accountability</p> <p>1. A 100 percent physical inventory of [insert items required to be inventoried], when applicable, will be taken monthly by the purchaser. A 100 percent physical inventory by serial number shall be taken quarterly of [insert items] issued at the operational unit level. A 100 percent physical inventory by serial number shall be taken semiannually of [insert items] stored or retained at installation, depot, post, or base level. To ensure verification, two people must conduct all inventories. [Insert items] expended during peacetime will be accounted for by serial number.</p> <p>2. The [insert appropriate foreign country SAO] will be permitted to conduct a U.S. inspection and inventory of [insert items] by serial number annually. As appropriate, [insert items] are required to be inventoried annually by physical count. Inventory and accountability records maintained by the purchaser will be made available for review.</p> <p>c. Transportation. Movements of [insert appropriate missile] will meet U.S. standards for safeguarding classified material in transit as specified by the USG in DoD 5100.76-M (current revision), "Physical Security of Sensitive Conventional Arms, Munitions, and Explosives" (standards of which will be provided to the purchaser), and paragraph h below.</p> <p>d. Access to Hardware and Classified Information</p> <p>1. Access to hardware and related classified information will be limited to military and civilian personnel of the purchasing Government (except for authorized U.S. personnel as specified herein) who have the proper security clearance and who have an</p> |

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| | | <p>established need to know the information in order to perform their duties. Information released will be limited to that necessary to perform assigned responsibility and, where possible, will be oral or visual only.</p> <p>2. Maintenance that requires access to the interior of the [insert missile, operational system, etc] beyond that required of the operator, and maintenance or repair that requires access to the interior of the guidance assembly of [insert item(s)] will be performed under U.S. control.</p> <p>e. Compromise, Loss, Theft, and Unauthorized Use. The purchaser will report through the security assistance office and country team to the DoS by the most expeditious means any instances of compromise, unauthorized use, loss or theft of any [insert missile and any other materiel] or related information. This will be followed by prompt investigation and the results of the investigation will be provided through the same channels.</p> <p>f. Third-Party Access. The recipient will agree that no information on [insert appropriate missile] will be released to a third-country Government, person or other third-country entity without U.S. approval.</p> <p>g. Damaged/Expended Materiel. Damaged [insert systems, materiel] will be returned to the U.S. Army for repair or demilitarization.</p> <p>h. Conditions of Shipment and Storage for [insert missile system]. Principal components (missiles and, as applicable, gripstocks or launchers) of the [insert missile system and any other items requiring separate storage] will be stored in at least two separate locations and will be shipped [insert how; e.g., in separate containers, separately]. The storage locations will be physically separated sufficiently so that a penetration of the security at one site will not place other sites at risk.</p> <p>i. Conditions of Use. Assembly of the system will not be permitted for field exercises or deployments wherein the use of the [insert appropriate missile] system is simulated. In such cases, inert training devices may be used. The recipient will use information on the [insert appropriate missile] only for the purpose for which it was given.”</p> |
| Man-Portable Air Defense Systems | <p>Mandatory for LOAs for sales of MANPADS to purchasers other than NATO, NATO Nations, Japan, Australia, and New Zealand.</p> <p>Mandatory for Amendments and Modifications that add MANPADS to cases for purchasers other than NATO, NATO Nations, Japan, Australia, and New Zealand.</p> <p>See Chapter 8, paragraph C8.3.3.</p> | <p>“Purchaser agrees to adhere to the following additional security requirements associated with [insert appropriate missile/system]. Modification of specified requirements to meet indigenous conditions may be approved by the Office of the Provost Marshal General, Army Physical Security (DAPM-MPD-PS), U.S. Army.</p> <p>a. Physical Security. The [insert appropriate missile] will be stored in magazines that are at least equivalent in strength to U.S. Army requirements as specified in subparagraph (1) below. The purchaser also agrees to comply with U.S. Army specified requirements for lighting, doors, locks, keys, fencing, and surveillance and guard systems. Specific requirements will be agreed upon and installed prior to delivery of the missile system. U.S. Army representatives will be allowed to verify security measures and procedures established for implementation of these requirements.</p> |

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| | | <p>1. Magazines. Reinforced concrete, arch type, earth covered whose construction is at least equivalent in strength to the requirements of Chapter 5, DoD 6055.9-STD, "Ammunition and Explosive Safety Standards," July 1999, will be used for storage (standards of which will be provided to the purchaser).</p> <p>2. Lighting. Lighting will be provided for exterior doors and along perimeter barriers. Security lighting requirements will conform to the ammunition and safety requirements of U.S. Army Technical Manual 9-1300-206, Appendix C (standards of which will be provided to the purchaser).</p> <p>3. Doors, Locks, and Keys. Exterior doors will be class five steel vault doors secured by two key-operated high security padlocks and a high security shrouded hasp. Keys will be secured separately to ensure effective two-man control of access (i.e., two authorized persons must be present to enter). Use of a master or multiple key system is prohibited.</p> <p>4. Fencing. Fencing will be six foot (minimum) steel chain link with a one-foot overhang mounted on steel or reinforced concrete posts over firm base. Clear zones will be established 30 feet inside and 12 feet outside the perimeter fence (provided there is adequate space).</p> <p>5. Surveillance and Guard. A full-time guard force or combination guard force and intrusion detection system (IDS) will be provided. When the IDS is not operational, 24-hour guard surveillance is required.</p> <p>6. Access to Storage Facilities. Two authorized persons will be required to be present during any activity that affords access to storage facilities containing [insert missile/system]. Lock and key procedures will be developed to ensure that no single individual can obtain unescorted or unobserved access to [insert missile/system] storage facilities.</p> <p>b. Accountability</p> <p>1. Each month, the purchaser will take a 100 percent physical inventory of [insert items required to be inventoried], when applicable. A 100 percent physical inventory by serial number shall be taken quarterly of [insert items] issued at the operational unit level. A 100 percent physical inventory by serial number shall be taken semiannually of [insert items] stored or retained at installation, depot, post, or base level. To ensure verification, two people must conduct all inventories. [Insert items] expended during peacetime will be accounted for by serial number.</p> <p>2. The [insert appropriate foreign country SAO] will be permitted to conduct a U.S. inspection and inventory of [insert items] by serial number annually. As appropriate, [insert items] are required to be inventoried annually by physical count. Inventory and accountability records maintained by the purchaser will be made available for review.</p> <p>c. Transportation. Movements of [insert appropriate missile] will meet U.S. standards for safeguarding classified material in transit as specified by the USG in DoD 5100.76-M (current revision), "Physical Security of Sensitive Conventional Arms, Munitions, and Explosives" (standards of which will be provided to the purchaser),</p> |

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| | | <p>and paragraph h below.</p> <p>d. Access to Hardware and Classified Information.</p> <p>1. Access to hardware and related classified information will be limited to military and civilian personnel of the purchaser (except for authorized U.S. personnel as specified herein) who have the proper security clearance and who have an established need to know the information in order to perform their duties. Information released will be limited to that necessary to perform assigned responsibility and, where possible, will be oral or visual only.</p> <p>2. Maintenance that requires access to the interior of the [insert missile, operational system, etc.] beyond that required of the operator, and maintenance or repair that requires access to the interior of the guidance assembly of [insert item(s)] will be performed under U.S. control.</p> <p>e. Compromise, Loss, Theft, and Unauthorized Use. The purchaser will report through the security assistance office and country team to the DoS by the most expeditious means any instances of compromise, unauthorized use, loss or theft of any [insert missile and any other materiel] or related information. This will be followed by prompt investigation and the results of the investigation will be provided through the same channels.</p> <p>f. Third-Party Access. The recipient will agree that no information on [insert appropriate missile] will be released to a third-country Government, person or other third-country entity without U.S. approval.</p> <p>g. Damaged/Expended Materiel. Damaged [insert systems, materiel] will be returned to the U.S. Army for repair or demilitarization.</p> <p>h. Conditions of Shipment and Storage for [insert missile system]. Principal components (missiles and, as applicable, gripstocks or launchers) of the [insert missile system and any other items requiring separate storage] will be stored in at least two separate locations and will be shipped [insert how; e.g., in separate containers, separately]. The storage locations will be physically separated sufficiently so that a penetration of the security at one site will not place other sites at risk.</p> <p>i. Conditions of Use.</p> <p>1. The two principle components of the [insert appropriate missile system and any other items] may be brought together and assembled under the following circumstances:</p> <p>(a) In the event of hostilities or imminent hostilities.</p> <p>(b) For firing as part of regularly scheduled training; however, only those rounds to be fired will be withdrawn from storage and assembled.</p> <p>(c) For lot testing; however, only rounds to be tested will be withdrawn from storage and assembled.</p> <p>(d) When systems are deployed as part of the point defenses of high priority installations or activities (e.g., key Government buildings, military headquarters, essential utilities, air defense facilities).</p> <p>2. The purchaser will advise the U.S. Security Assistance</p> |

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| | | Organization in advance of any assembly of the various missile and [insert any other items] for the [insert appropriate missile] for training or lot testing. 3. The U.S. Government will be notified of deployments through the Security Assistance Organization.” |
| Military Assistance Program (MAP) Redistributed Property | Mandatory for LOAs that include items originally purchased under MAP. Mandatory for Amendments and Modifications that add items originally purchased under MAP. See Chapter 11, Table C11.T23. | “Upon acceptance, the purchaser should return one signed copy of this LOA to Defense Financing and Accounting Service-Denver Center, Attn: DFAS-ADYK/DE, 6760 Irvington Place, Denver, CO 90279-2000, with payment to attention of DFAS-ADYK/DE and 11 [insert last digit of current fiscal year] 1082 account.” |
| Military Assistance Program (MAP) Redistributed Property Identification | Mandatory for LOAs that include items originally purchased under MAP. This note should be included at the bottom of the item description for that line (vice in the note pages). Mandatory for Amendments and Modifications when a MAP line item is added or changed. See Chapter 11, Table C11.T23. | “Redistributable MAP” |
| Missile Technology Control Regime (MTCR) | Mandatory for LOAs. Mandatory for Amendments and Modifications if the note was previously not included on the case. See Chapter 3, section C3.2. | “Paragraph 2.3 of the Standard Terms and Conditions of this LOA discusses use and transfer restrictions on articles and services provided under this LOA and emphasizes that the purchaser “shall not use or permit their use for purposes other than those authorized, unless the written consent of the USG has first been obtained.” The purchaser agrees not to divert articles and services received under this LOA for purposes or uses other than those for which furnished to include, but not limited to, any use that could contribute to the acquisition, design, development or production of a “missile,” as defined in section 74 of the AECA (22 U.S.C. 2797c). The items will be used only for the purpose stated and such use will not be modified nor the items modified or replicated without the prior consent of the USG; neither the items nor replicas nor derivatives thereof will be retransferred without the consent of the USG. The USG also reserves the right to take action under section 73(a) of the AECA (22 U.S.C. 2797b(a)) in the case of any export or transfer of any MTCR equipment or technology that contributes to the acquisition, design, development or production of missiles in a country that is not an MTCR adherent.” |
| Night Vision Devices (NVDs) Physical Security and | Mandatory for LOAs for sales of NVDs, image intensifier tubes, or other NVD spare parts. Mandatory for Amendments | “A. The purchaser agrees to secure the Night Vision Devices (NVDs) transferred by the U.S. Government (USG) against loss, theft, or unauthorized access, and to perform routine inventory checks. The purchaser agrees to provide the [insert SAO office] and/or other appropriate USG representatives a written physical |

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| Accountability | <p>and Modifications that add NVDs, image intensifier tubes, or other NVD spare parts to a case.</p> <p>Wording may vary – The Deputy Under Secretary of Defense for Technology Security Policy and/or the Defense Security Cooperation Agency will provide specific conditions, which may require changes to the standard note for each NVD transfer. These changes will be incorporated into the LOA note as written in the signed authorization granting the exception to policy.</p> | <p>security and accountability control plan within 30 days of acceptance of this offer. Inventory and accountability records maintained by the purchaser shall be retained for at least one year and made available for review upon USG request. Upon request, the USG shall be permitted to conduct an inspection and inventory of the devices listed in this offer by serial number. In case of the destruction, loss, theft, or unauthorized access of any NVDs listed in this offer, the purchaser agrees to report the incident immediately to the USG (e.g. via the SAO to the Defense Technology Security Administration (DTSA)). The purchaser agrees to provide a written report with details of the incident within 30 calendar days to the USG. This report will include the steps being taken both to recover the equipment (if applicable) and to prevent recurrence.</p> <p>B. To assist in the development of purchaser's physical security and accountability control plan, the following minimum measures, are included as recommendations:</p> <p>i. <u>Physical Security</u>: When not issued for use, the unit commander will provide NVD controlled-access, double barrier protection. Examples of double barrier protection include: a locked, built-in or free-standing steel container, which is secured to a locked or guarded building, enclosed van, trailer or armored vehicle; a locked steel cage or vault secured in a locked or guarded structure. When in use, individuals issued NVDs will secure the devices and be responsible for maintaining control of the devices at all times. NVDs may be secured inside a locked, enclosed van, trailer, or armored vehicle if these vehicles remain under constant surveillance.</p> <p>ii. <u>Accountability</u>: While not issued for use, the unit commander or designated representatives will conduct monthly 100% physical count inventories and quarterly 100% inventories by serial number of the NVD. Records of these inventories will be kept for one year. While issued for use, the unit commander or designated representatives will perform a daily visual inventory of the NVD.</p> <p>C. The Deputy Under Secretary of Defense for Technology Security Policy and Counterproliferation authorized this transfer on [insert date].”</p> |
| Nonrecurring Costs – Do Not Apply | <p>Mandatory for LOAs when no NC charges apply to any line on the case.</p> <p>Mandatory for Amendments and Modifications when:</p> <p>(1) line items are added and no NC charge applies to any lines on the case; or</p> <p>(2) quantities are increased on line items where no NC charge applies to any lines on the case.</p> <p>See Chapter 9, paragraph C9.4.5.</p> | <p>“No Nonrecurring Costs (NC) apply to this FMS case.”</p> |
| Nonrecurring Costs - Apply | <p>Mandatory for LOAs when an NC charge applies and</p> | <p>“Nonrecurring Costs (NC) apply to line item(s) [insert numbers] of this FMS case and are included within the cost of the line item.”</p> |

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| | <p>has been included in the price.</p> <p>Mandatory for Amendments and Modifications when:</p> <p>(1) line items are added and the NC charge applies to the new lines and has been included in the price; or</p> <p>(2) quantities are increased on line items where an NC charge applies and has been included in the price.</p> <p>See Chapter 9, Table C9.T2.</p> | |
| Nonrecurring Costs – Apply (Estimated) | <p>Mandatory for LOAs when an NC charge applies but final NC rates have not yet been established so an estimated amount has been included in the price.</p> <p>Mandatory for Amendments and Modifications when:</p> <p>(1) line items are added and the NC charge applies to the new lines but final NC rates have not yet been established so an estimated amount has been included in the price; or</p> <p>(2) quantities are increased on line items where an NC charge applies but final NC rates have not yet been established so an estimated amount has been included in the price.</p> <p>See Chapter 9, paragraph C9.4.5.</p> | <p>“Nonrecurring Costs (NC) apply to line item(s) [insert numbers] of this FMS case. An estimated amount for NC is included in the price of the line. Once a final NC value is approved by the USG, a Modification will be issued to adjust the price.”</p> |
| Nonrecurring Costs – Cooperative Agreements | <p>Mandatory for LOAs when an NC charge is collected or waived as part of a cooperative project or consortium of which USG is a member.</p> <p>Mandatory for Amendments and Modifications when:</p> <p>(1) line items are added and the consortium NC charge applies to the new lines; or</p> <p>(2) quantities are increased on line items where a consortium NC charge applies.</p> | <p>Varies - wording must be determined on a case-by-case basis. Contact DSCA (Operations, Programs, and Strategy Directorates) for assistance in drafting a unique note.</p> |

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| | See Chapter 9, subparagraph C9.6.3.2.4. | |
| Nonrecurring Costs – FMS Credit (Non-Repayable) | <p>Mandatory for LOAs when an NC charge applies but the Term of Sale is “FMS Credit (Non-Repayable).”</p> <p>Mandatory for Amendments and Modifications when the Term of Sale remains “FMS Credit (Non-Repayable) and (1) line items are added and the NC charge applies to the new lines; or (2) quantities are increased on line items where an NC charge applies.</p> <p>See Chapter 9, paragraph C9.4.5.</p> | <p>“Nonrecurring Costs (NC) apply to line item(s) [insert numbers] of this FMS case. These charges are not included on this case because the Term of Sale is “FMS Credit (Non-Repayable).” If the Terms of Sale on this case are changed to include other terms, NC charges will be added to this case unless a waiver is requested and approved.”</p> |
| Nonrecurring Costs – MAP Merger | <p>Mandatory for LOAs when an NC charge applies but the Term of Sale is “MAP Merger.”</p> <p>Mandatory for Amendments and Modifications when the Term of Sale remains “MAP Merger and (1) line items are added and the NC charge applies to the new lines; or (2) quantities are increased on line items where an NC charge applies.</p> <p>See Chapter 9, paragraph C9.4.5.</p> | <p>“Nonrecurring Costs (NC) apply to line item(s) [insert numbers] of this FMS case. These charges are not included on this case because the Term of Sale is “MAP Merger.” If the Terms of Sale on this case are changed to include other terms, NC charges will be added to this case unless a waiver is requested and approved.”</p> |
| Nonrecurring Costs – Non-USG Charges | <p>Mandatory for LOAs when an NC charge (known as a “Special NC”) is being collected on behalf of another country.</p> <p>Mandatory for Amendments and Modifications when:</p> <p>(1) line items are added and the special NC charge applies to the new lines; or</p> <p>(2) quantities are increased on line items where a special NC charge applies.</p> <p>See Chapter 9, Table C9.T2.</p> | <p>“Special Nonrecurring Costs (NC) apply to line item(s) [insert numbers] of this FMS case and are included within the cost of the line item. These costs are being collected on behalf of another country and cannot be waived by the USG.”</p> |
| Nonrecurring Costs – Waiver Approved | <p>Mandatory for LOAs when an NC charge applies, but has been waived.</p> | <p>“Nonrecurring Costs (NC) apply to line item(s) [insert numbers] of this LOA. The purchaser’s request to waive these charges has been approved by DSCA memorandum I-[insert number], dated [insert</p> |

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| | <p>Mandatory for Amendments and Modifications when:</p> <p>(1) line items are added and an NC charge applies to the new lines and has been waived; or</p> <p>(2) quantities are increased on line items where an NC charge applies and has been waived.</p> <p>The note should identify the DSCA I-number and date of all NC waivers that have been granted against the case.</p> <p>See Chapter 9, paragraph C9.6.3.</p> | <p>date]. Therefore, these costs have not been included in this case.”</p> |
| Nonrecurring Costs – Waiver Under Review | <p>Mandatory for LOAs when an NC charge applies and</p> <p>(1) the costs are included in the price; and</p> <p>(2) a waiver has been requested but has not yet been approved/disapproved.</p> <p>Mandatory for Amendments and Modifications when:</p> <p>(1) line items are added and an NC charge applies to the new lines and a waiver has been requested but not approved/disapproved; or</p> <p>(2) quantities are increased on line items where an NC charge applies and a waiver has been requested but not approved/disapproved.</p> <p>This note CANNOT be used if the justification for the waiver is “Loss of Sale” since “Loss of Sale” waivers must be approved prior to LOA (or Amendment when items are being added) signature/ acceptance.</p> <p>See Chapter 9, paragraph C9.6.3.</p> | <p>“Nonrecurring Costs (NC) apply to line item(s) [insert numbers] of this FMS case and are included within the cost of the line item. The purchaser’s request for waiver of NC charges against line item [insert number] is under review and was forwarded to DSCA on [insert date]. If this waiver is approved, an LOA Amendment or Modification will be prepared to delete these costs from this case.”</p> |
| Offset Costs | <p>Mandatory for LOAs, Amendments and Modifications where articles/services will be sourced from procurement</p> | <p>“The Department of Defense is not a party to any offset agreements/arrangements that may be required by the Purchaser in relation to the sales made in this LOA and assumes no obligation to administer or satisfy any offset requirements or bear any of the associated costs. To the extent that the Purchaser requires offsets in</p> |

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| | <p>and financed wholly with Purchaser cash or repayable FMF funds.</p> <p>See Chapter 6, paragraph C6.3.9.</p> | <p>conjunction with this sale, offset costs may be included in the price of contracts negotiated under this LOA. If the Purchaser desires visibility into these costs, the Purchaser should raise this with the contractor during negotiation of offset arrangements.”</p> |
| OT&E Incomplete | <p>Mandatory for LOAs that include developmental systems that have not yet been approved for U.S. production (i.e., Defense Acquisition Board full rate production, following successful final OT&E (Milestone 3.b), has not been approved).</p> <p>Mandatory for Amendments and Modifications that add developmental systems that have not yet been approved for U.S. production.</p> <p>See Chapter 5, subparagraph C5.1.4.3.1.</p> | <p>Varies – summarizes the potential effects on the program if the system does not receive production approval.</p> |
| Patent Rights | <p>Mandatory for LOAs when an individual, commercial entity, or foreign country asserts ownership of a foreign patent on an item to be sold on the case and there are reasonable grounds that a purchaser may be subjected to a possible claim for infringement.</p> <p>The note should read substantially as shown but may be tailored on a case-by-case basis.</p> <p>Mandatory for Amendments and Modifications that add materiel where such infringement claims are possible.</p> | <p>“[Insert name of individual, commercial entity, or foreign country, and address] has alleged rights in certain components of the [insert item] offered herein. In this connection, the purchaser’s particular attention is invited to Standard Condition 3.”</p> |
| Payment Schedule-Purchaser Requested | <p>Mandatory for LOAs when a unique purchaser requested payment schedule has been approved.</p> <p>This note should be included beneath the payment schedule.</p> <p>Mandatory for Amendments and Modifications when a</p> | <p>“This schedule was requested by the purchaser [insert reference] and approved by [insert activity and date]. The USG reserves the right to bill for additional amounts if, during the execution phase, actual costs materialize at a rate that cannot be supported by the purchaser-based schedule.”</p> |

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| | <p>unique purchaser requested payment schedule has been approved.</p> <p>See Chapter 9, subparagraph C9.9.2.3.</p> | |
| <p>Payment Schedule-Purchaser Requisition Driven</p> | <p>Mandatory for LOAs when a unique payment schedule based on purchaser requisitioning has been approved.</p> <p>This note should be included beneath the payment schedule.</p> <p>Mandatory for Amendments and Modifications when a unique payment schedule based on purchaser requisitioning has been approved.</p> <p>See Chapter 9, subparagraph C9.9.1.5.2.4.</p> | <p>“This schedule represents the USG’s best approximation only, and is ultimately determined by actual FMS purchaser requisitioning.”</p> |
| <p>PCS Personnel</p> | <p>Mandatory for LOAs that include costs for PCS personnel.</p> <p>This note should be included at the bottom of the item description for the applicable line (vice in the note pages).</p> <p>Mandatory for Amendments and Modifications when a line item that includes PCS costs is added or changed.</p> <p>See Chapter 5, subparagraph C5.4.8.5.</p> | <p>“This case contains PCS personnel.”</p> |
| <p>Personnel Protection and Related Costs</p> | <p>Mandatory for LOAs when it is envisioned that the purchaser may fail to abide by existing Status of Forces Agreement (SOFA) or other status provisions thus increasing costs associated with an FMS program.</p> <p>Mandatory for Amendments and Modifications when the note was not previously included on the case and it is envisioned that the purchaser may fail to abide by existing Status of Forces Agreement (SOFA) or other</p> | <p>“A. Passports, Visas, Licenses, and Permits.</p> <p>1. [Insert USG Contractor] Cost and delivery estimates herein anticipate the purchaser will, within the framework of its laws, ensure the timely issuance of work, entry, or exit visas; work, vehicle operator, residence, or in-country travel permits; and any other appropriate licenses or permits required of the personnel, including dependents, to carry out this effort.</p> <p>2. [Insert USG Contractor] shall be responsible for timely and complete submittal of the necessary information and forms directly to the appropriate purchaser agency for the required passports, visas, licenses, or permits. The contractor shall be responsible for the sponsorship of its employees and their dependents and shall process said permits directly with the appropriate purchaser agency.</p> <p>B. Access. [Insert USG Contractor] cost and delivery schedules herein anticipate that U.S. personnel in country will be</p> |

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| | <p>status provisions. Wording may be determined on a case-by-case basis. Text provided in this table is for sample purposes only. See Chapter 5, subparagraph C5.4.8.6.</p> | <p>authorized, at no cost, reasonable access to all data, plans, reports, or other information and all existing and proposed offices, sites, and areas within the country as required to accomplish this effort.</p> <p>C. Export of Data. [Insert USG Contractor] personnel shall not be required or expected to deliver to the purchaser, nor to any person or entity not a citizen of the United States of America, any technical data produced or utilized under this LOA until the purchaser has been furnished with clear evidence that such delivery of the data is (1) approved by the U.S. State Department pursuant to the International Traffic in Arms Regulation, or (2) approval is not required.</p> <p>D. Taxes, Duties, and Charges for Doing Business. [Insert USG Contractor] contract(s) implementing this LOA will include the clause entitled “Taxes-Foreign Fixed-Price Contracts (June 2003)” set forth in Federal Acquisition Regulation Subsection 52.229-6; therefore, price and delivery estimates within this LOA anticipate the following:</p> <ol style="list-style-type: none"> 1. Property, materiel, equipment, household furniture, appliances, and supplies imported into the country by contractor exclusively for use in support of the contractor and its personnel and consigned and marked as required or approved by the USG will be exempt from import and export duties, taxes, licenses, excises, imposts, and any other identifiable charges. The contractor will maintain an inventory control and accounting system adequate to reflect the usage and disposition of all contractor-owned property that has entered the country duty-free under this LOA. 2. The purchaser, its agencies, and political subdivisions will levy no taxes or fees (including taxes on individual or corporate income or property, customs and import duties, or other taxes on employee personal household goods, supplies and personal effects imported into the country for personal use) on the contractor, its employees, or the dependents of such employees. 3. If any charges under D.1 or D.2 are imposed by the purchaser, costs thereby incurred by the contractor will be reimbursed to the contractor at cost, including applicable overhead and General and Administrative, but excluding profit, out of national funds to be provided by the purchaser under this LOA. <p>E. Security. [Insert USG contractor] price and delivery estimates anticipate that the purchaser will provide adequate security to protect personnel and property associated with this LOA and located on purchaser military bases, installations, or other designated work sites.”</p> |
| Program Review Schedule | <p>Mandatory for LOAs that include a program review requirement.</p> <p>Mandatory for Amendments and Modifications that delete or add a program review requirement.</p> | <p>“The initial review schedule has been projected as follows: [insert review events]. Future changes and/or additions to this projected schedule will be based on further program definition and will be provided through official correspondence to the FMS purchaser for concurrence.”</p> |
| Prohibition on | Mandatory for LOAs (to | “Any articles, equipment, materials, supplies, goods, or other |

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| Taxation of U.S. Assistance | <p>include Pseudo LOAs) when the sale of articles is financed in whole or in part with any type of U.S. Assistance Funds appropriated under the Foreign Operations, Export Financing, and Related Programs Appropriations Act (e.g., FMF, INCLE, PKO, etc.).</p> <p>Mandatory for Amendments and Modifications that add articles to a case that are financed with any type of U.S. Assistance Funds appropriated under the Foreign Operations, Export Financing, and Related Programs Appropriations Act.</p> | <p>commodities purchased with U.S. Assistance Funds appropriated and allocated pursuant to the Foreign Operations, Export Financing, and Related Programs Appropriations Act in support of this Letter of Offer and Acceptance (LOA), whether provided directly by the USG or through procurement contracts or otherwise in support of this LOA, shall be exempt from all value added taxes and customs duties imposed by the recipient country or the full amount of the tax or customs duty must be reimbursed by the Purchaser. This exemption is in addition to any other tax exemption provided by the Purchaser through separate agreements or other means.”</p> |
| Repair and Return Customs Reporting | <p>Mandatory for LOAs that include Repair and Return lines.</p> <p>Mandatory for Amendments and Modifications when Repair and Return lines are added.</p> | <p>Varies - indicate the requirement for the purchaser to report imports and exports made under the LOA to U.S. Customs.</p> |
| Security Assurances | <p>Mandatory for LOAs when the purchaser proposes to take custody of classified material in the United States, and they comply with the provisions of Chapter 3, subparagraph C3.5.4.5. The Implementing Agency will incorporate the transmission instructions (an alternative for shipment of classified materials) or the requirement for an approved Transportation Plan (see Chapter 3, Figure C3.F5.) into the LOA security requirements.</p> <p>Mandatory for Amendments and Modifications that add classified material that the purchaser intends to take custody of in the United States.</p> | <p>Varies depending on the transmission instructions or requirement for an approved transportation plan.</p> |

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| Security Assurances - NATO | <p>Mandatory for LOAs with NATO Commands or Agencies.</p> <p>Mandatory for Amendments and Modifications on cases with NATO Commands or Agencies if not previously included on the case.</p> | <p>“All U.S. classified material or information (to include plans, designs, specifications, and technical data) provided under this Letter of Offer and Acceptance shall be protected as NATO classified information of an equivalent classification level in accordance with the policy and procedures contained in NATO Document C-M(55)15 (Final), ‘Security Within the North Atlantic Treaty Organization’.”</p> |
| Shipment Consolidation | <p>Mandatory for LOAs when substantial shipment consolidation of LOA articles is anticipated.</p> <p>Mandatory for Amendments and Modifications that add consolidated shipments if the note was not previously included on the case.</p> | <p>“This is supplemental to LOA Standard Terms and Conditions provision 5.4. If the USG determines that delivery was delayed more than 90 days following passage of title due to shipment consolidation, the date of the shipment from the consolidation location may be used as the start point in determining the 1 year period for claim eligibility only.”</p> |
| Short Offer Expiration Date (OED) | <p>Mandatory for LOAs when the purchaser will have less than the standard period (see Figure C5.F5.) to review the LOA document (e.g., when the price estimates are dependent on contract award by a certain date).</p> <p>Mandatory for Amendments when the purchaser will have less than the standard period to review the LOA document.</p> | <p>Varies depending on the reason for the short OED.</p> |
| Small Case Management Line (SCML) | <p>Mandatory for LOAs that include an SCML.</p> <p>Mandatory for Amendments and Modifications that add an SCML to the case.</p> <p>See Chapter 9, subparagraph C9.4.7.</p> | <p>“Small Case Management Line (SCML). Any case “accepted” on or after 1 Aug 06 that will not collect at least \$15,000 in administrative surcharge using the established percentage must include an SCML to charge the difference in value between the calculated administrative surcharge amount and \$15,000. Line item [insert line item number] has been added to this case for that purpose. If this case is ever modified or amended and the calculated administrative surcharge amount changes, the value of the SCML will be adjusted to ensure the minimum \$15,000 combined administrative surcharge/SCML value is reached. If this case is ever modified or amended to increase the case value such that the administrative surcharge collection will exceed \$15,000, line item [insert line item number] will be reduced to \$0. The FMS administrative surcharge does not apply to the SCML.”</p> |
| Sole Source Procurement | <p>Mandatory for LOAs that include approved sole source procurement designations.</p> <p>Mandatory for Amendments and Modifications that add</p> | <p>“Sole-Source Procurement. Paragraph 1.2 of the Letter of Offer and Acceptance Standard Terms and Conditions states in part: “Unless the purchaser has requested in writing, that a sole source contractor be designated, and this Letter of Offer and Acceptance reflects acceptance of such designation by the Department of Defense, the purchaser understands that selection of the contractor</p> |

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| | <p>or change designations for sole source procurement.</p> <p>See Chapter 6, paragraph C6.3.4.</p> | <p>source to fill this requirement is solely the responsibility of the Government of the United States (hereinafter referred to as USG).”</p> <p>By letter dated [insert date] the purchaser has requested that [insert name of specific firm or other private source] be designated as [insert “prime contractor” or “subcontractor”] for line/items(s) [insert line item numbers] of this Letter of Offer and Acceptance. This note is evidence that the Department of Defense has accepted such request of the purchaser and that such designation is required at the written direction of the purchaser.”</p> |
| Status of Forces Agreement (SOFA) | <p>Mandatory for LOAs when the MILDEP General Counsel indicates a SOFA or SOFA-like agreement exists that is pertinent to the specific Security Assistance case.</p> <p>Mandatory for Amendments and Modifications when the note was not previously included on the case and the MILDEP General Counsel indicates a SOFA or SOFA-like agreement exists that is pertinent.</p> <p>See Chapter 5, subparagraph C5.4.8.6.</p> | <p>“USG military and civilian personnel present in the territory of the purchaser for the purpose of implementing this LOA shall be entitled to all of the rights, privileges, and immunities accorded in the [cite the agreement] regarding the status of their forces, dated [insert date] and any related implementing agreements.”</p> |
| Taxation of U.S. Assistance | See - Prohibition on Taxation of U.S. Assistance (note above) | |
| Technical Data Packages (TDPs) for Operations and Maintenance (O&M) | <p>Mandatory for LOAs that include any TDPs for O&M</p> <p>Mandatory for Amendments and Modifications that add or change TDPs for O&M.</p> <p>See Chapter 3, subparagraph 3.1.1.4.</p> | <p>Each LOA will state underneath the MASL description:</p> <p>“TDP for operation and maintenance (no production authorized)”</p> <p>Standard LOA note will read:</p> <p>“The technical data package offered herein is provided only for the purpose of operation and maintenance of the [insert defense article] transferred to [insert TDP purchaser] with USG approval. Should any new operation or maintenance procedures be developed by [insert purchaser] for the [insert defense article], they will be shared without charge with the U.S. program manager. In making this FMS offer to [insert purchaser], the U.S. Government makes no prior commitment or authorization for [insert purchaser] to manufacture the defense equipment described herein. Separate U.S. Government approval is required for such manufacture. The purchaser agrees that unless specific authorization is provided in writing from the U.S. Government, the technical data package will not be used for production.”</p> |
| Technical Data Packages (TDPs) for Production of Articles for Indigenous Use | <p>Mandatory for cases that include any TDPs for production (indigenous use only).</p> <p>Mandatory for Amendments and Modifications that add</p> | <p>Each LOA will state underneath the MASL description:</p> <p>“TDP for production”</p> <p>Standard LOA note will read:</p> <p>“1. The technical data package offered herein is provided for the manufacture of [insert quantity] [insert article] by [insert purchaser] for indigenous purposes only. Such manufacture may be</p> |

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| | <p>or change TDPs for Production.</p> <p>See Chapter 3, subparagraph 3.1.1.5.</p> | <p>accomplished either by the [insert purchaser] in its own Government-owned or Government-operated facilities or in designated in-country private commercial facilities.</p> <p>2. Any manufacture in excess of this quantity will require separate approval of the U.S. Government and the execution of an LOA Modification or Amendment.</p> <p>3. The information furnished under this LOA, and the product derived from the use of such information, shall not be disclosed or transferred to any third country, person, or organization without the prior written consent of the U.S. Government and, where required, the execution of an LOA Modification or Amendment.</p> <p>4. The use of technical data provided under this LOA will be limited to that required for the manufacture of the article(s) specifically authorized herein and its operation and maintenance. Information acquired by the U.S. Government without the unencumbered right to use and convey to others will not be furnished.</p> <p>5. It is understood that the furnishing of these technical data does not in any way constitute a license to make, use, sell, or transfer whatsoever any inventions, technical information, or know-how (hereinafter referred to as proprietary information) owned by third parties that may be described in the documentation.</p> <p>6. The U.S. Government incurs no liability for any procurement, manufacture, use, or sale by the purchaser that makes use of any of the aforementioned proprietary information, or for any results derived from the use of the technical data furnished. [Insert purchaser] agrees to indemnify the U.S. Government against any liability resulting from a claim asserted by the owner of any such proprietary rights in connection with such use by the purchaser of the documentation provided hereunder.</p> <p>7. The U.S. Government will use its best efforts to furnish technical data that are accurate, adequate for the authorized purpose, current, and complete; however, the U.S. Government does not guarantee the adequacy, accuracy, currency, or completeness of these data. Similarly, the U.S. Government does not guarantee the accuracy, adequacy, currency, or completeness of any U.S. industry documentation.</p> <p>8. Production Validation -- [Insert purchaser] will permit U.S. Government personnel access to Government and contractor facilities, records, and storage sites to review the implementation of the requirements of this LOA. Such access will be permitted when mutually convenient, but within a reasonable period of time after the request. Visits will be accomplished under established visit procedures.</p> <p>9. Flowback of [insert Purchaser] Technical Data to the U.S.: Technical Data -- [insert Purchaser] will furnish or cause to be furnished the following technical data to the U.S. Government at no cost to the U.S. Government other than the cost of reproduction, preparation, and handling:</p> <p>(a) All technical data pertaining to changes, modifications, and improvements in the design of [insert article] made in the course of development, evaluation, production, operation, and</p> |

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| | | <p>maintenance of [insert article].</p> <p>(b) All technical data pertaining to manufacturing processes employed in the production of [insert article].</p> <p>(c) Technical data pertaining to changes proposed in the design of [insert article] but not adopted.</p> <p>(d) Notwithstanding (a), (b), and (c) above, if [insert purchaser] incorporates an existing commercial item without modification of either the item or the [insert article] and if the item is not based in whole or in part on U.S. technical data or on U.S. design; and the item is not in whole or in part funded or financed by [insert purchaser] directly or indirectly; and there is no development contract or subcontract between [insert purchaser] and the supplier, then [insert purchaser] will only be required, to the extent that it has the right to do so without incurring liability to others, to provide the U.S. Government sufficient information for the U.S. Government to evaluate the item, to procure it, to incorporate it into the system, and to operate, maintain, repair, overhaul, and modify it.</p> <p>10. Right to Use -- [insert Purchaser] will grant or cause to be granted to the U.S. Government a non-exclusive, irrevocable, royalty-free license to use and have used for U.S. defense purposes, including security assistance, the technical data defined in 9. (a), (b), and (c) in above paragraph and any inventions (whether or not patentable) made in the course of activities covered by this LOA. Additionally, [insert purchaser] will use its best efforts to obtain licenses on fair and reasonable terms to the U.S. Government to use and have used the technical data defined in 9. (d) of above paragraph and patented inventions depicted in such technical data for U.S. defense purposes, including security assistance.</p> <p>11. Contract Provisions -- [insert Purchaser] will include suitable provisions in all pertinent program contracts, including a requirement to include those same provisions in all subcontracts, to meet the requirements of this section.</p> <p>12. The cost of the documentation provided hereunder does not include periodic updating. Revisioning services may be requested under a separate LOA, if desired.”</p> |
| Technical Data Packages (TDPs) for Production With Authorized Third Country Sale | <p>Mandatory for cases that include TDPs for production that will involve third party sales.</p> <p>Mandatory for Amendments and Modifications that add or change TDPs for Production that will involve third party sales.</p> <p>See Chapter 3, subparagraph 3.1.1.5.</p> | <p>Each LOA will state underneath the MASL description: “TDP for production”</p> <p>Standard LOA note will read:</p> <p>“1. The technical data package offered herein is provided for the manufacture of [insert quantity] [insert article] in [insert purchaser] for indigenous purposes only and [insert quantity] of [insert article] in [insert purchaser] for subsequent transfer to [insert country name(s)]. Such manufacture may be accomplished either by the [insert purchaser] in its own Government-owned or Government-operated facilities or in designated in-country private commercial facilities.</p> <p>2. Any manufacture in excess of this quantity and as authorized in paragraph 1. above requires separate approval of the U.S. Government and the execution of an LOA Modification or Amendment.</p> |

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| | | <p>3. The information furnished under this LOA, and the product derived from the use of such information, shall not be disclosed or transferred to any third country, person, or organization other than the [insert country name(s)] without the prior written consent of the U.S. Government and, where required, the execution of an LOA Modification or Amendment.</p> <p>4. The use of technical data, which will be provided under this LOA, will be limited to that required for the manufacture of the equipment specifically authorized herein and its operation and maintenance. Information, which has been acquired by the U.S. Government without the unencumbered right to use and convey to others, will not be furnished.</p> <p>5. It is understood that the furnishing of these technical data does not in any way constitute a license to make, use, sell, or transfer whatsoever any inventions, technical information, or know-how (hereinafter referred to as proprietary information) owned by third parties, which may be described in the documentation.</p> <p>6. The U.S. Government incurs no liability for any procurement, manufacture, use, or sale by [insert purchaser] that makes use of any of the aforementioned proprietary information, or for any results derived from the use of the technical data furnished. [Insert purchaser] agrees to indemnify the U.S. Government against any liability resting from a claim asserted by the owner of such proprietary rights in connection with such use by the [insert purchaser] of the documentation provided hereunder.</p> <p>7. The U.S. Government will use its best efforts to furnish technical data that are accurate, adequate for the authorized purpose, current, and complete; however, the U.S. Government does not guarantee the adequacy, accuracy, currency, or completeness of these data. Similarly, the U.S. Government does not guarantee the accuracy, adequacy, currency, or completeness of any U.S. industry documentation.</p> <p>8. Production Validation -- The [insert purchaser] will permit U.S. Government personnel access to Government and contractor facilities, records, and storage sites to review the implementation of the requirements of this LOA. Such access will be permitted when mutually convenient, but within a reasonable period of time after the request. Visits will be accomplished under established visit procedures.</p> <p>9. Flowback of [insert Purchaser] Technical Data to the United States:</p> <p>a. Technical Data -- [insert Purchaser] will furnish or cause to be furnished the following technical data to the U.S. Government at no cost to the U.S. Government other than the cost of reproduction, preparation, and handling:</p> <p>(1) All technical data pertaining to changes, modifications, and improvements in the design of [insert article] made in the course of development, evaluation, production, operation, and maintenance of [insert article].</p> <p>(2) All technical data pertaining to manufacturing processes employed in the production of [insert article].</p> <p>(3) Technical data pertaining to changes proposed in the design of</p> |

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| | | <p>[insert article] but not adopted.</p> <p>(4) Notwithstanding (1), (2), and (3) above, if [insert purchaser] incorporates an existing commercial item without modification of either the item or the [insert article] and if: the item is not based in whole or in part on U.S. technical data or on U.S. design; and the item is not in whole or in part funded or financed by [insert purchaser] directly or indirectly; and there is no development contract or subcontract between [insert purchaser] and the supplier, then [insert purchaser] will only be required, to the extent that it has the right to do so without incurring liability to others, to provide the U.S. Government sufficient information for the U.S. Government to evaluate the item, to procure it, to incorporate it into the system, and to operate, maintain, repair, overhaul, and modify it.</p> <p>b. Right to Use -- [insert Purchaser] will grant or cause to be granted to the U.S. Government a non-exclusive, irrevocable, royalty-free license to use and have used for U.S. defense purposes, including security assistance, the technical data defined in a. (1), (2), and (3) above, and any inventions (whether or not patentable) made in the course of activities covered by this LOA. Additionally, [insert purchaser] will use its best efforts to obtain licenses on fair and reasonable terms to the U.S. Government to use and have used the technical data defined in subparagraph a. (4) and patented inventions depicted in such technical data for U.S. defense purposes, including security assistance.</p> <p>c. Contract Provisions -- [insert Purchaser] will include suitable provisions in all pertinent program contracts, including a requirement to include those same provisions in all subcontracts, to meet the requirements of this section.</p> <p>10. The cost of the documentation provided hereunder does not include periodic updating. Revisioning services may be requested as an Amendment to this LOA or under a separate LOA, if desired.”</p> |
| Technical Data Packages (TDPs) for Study Purposes | <p>Mandatory for LOAs that include any TDPs for study purposes.</p> <p>Mandatory for Amendments and Modifications on cases involving TDPs for study purposes.</p> <p>See Chapter 3, subparagraph 3.1.1.5.</p> | <p>Each LOA will state underneath the MASL description: “TDP for study (no production authorized)”</p> <p>Standard LOA note will read:</p> <p>“The technical data package offered herein is provided for study purposes only. In making this FMS offer to [insert purchaser], the U.S. Government makes no prior commitment or authorization for [insert purchaser] to manufacture the defense equipment described herein. Separate U.S. Government approval is required for such manufacture. If requested and approved, a new LOA or LOA Amendment will be issued for the provision of a certified production technical data package and any applicable charges for its use for manufacture.”</p> |
| Technical Data Packages (TDPs) Revisioning Services | <p>Mandatory for LOAs that include updates to TDPs.</p> <p>Mandatory for Amendments and Modifications that include updates to TDPs.</p> <p>See Chapter 3, subparagraph C3.1.1.6.</p> | <p>If TDP transfer notes in the basic LOA comply with the current version of the SAMM the following note will be used:</p> <p>“The revisioning services offered herein are intended for updating the purchaser’s existing [insert “production”, “O&M”, or “study”] technical data package (TDP) furnished on FMS case [insert case designator], accepted [insert date]. All TDP notes supporting [insert case designator] are incorporated herein by reference and</p> |

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| | | <p>apply to the revisioning services transferred pursuant to this LOA.”</p> <p>If a previous revisioning services LOA brought the notes into compliance with the current version of this SAMM section, the following note will be used:</p> <p>“The revisioning services offered herein are intended for updating the purchaser’s existing [insert “production”, “O&M”, or “study”] technical data package (TDP) furnished on FMS case [insert designator], accepted [insert date], and on revisioning service LOA [insert designator], accepted [insert date]. All TDP notes supporting [insert revisioning services LOA designator] are incorporated herein by reference and apply to the revisioning services transferred pursuant to this LOA.”</p> |
| Transportation – Estimated Actual Cost | <p>Mandatory for LOAs that include estimated actual transportation costs.</p> <p>Mandatory for Amendments and Modifications that add or change estimated actual transportation costs.</p> <p>See Chapter 7, paragraph C7.18.1.</p> | <p>Varies – must identify the amount by line item for each DTS transportation element (e.g., CONUS inland, port loading, ocean transportation).</p> |
| Transportation and Services | <p>Mandatory for LOAs that include Defense Transportation Service (DTS).</p> <p>Mandatory for Amendments and Modifications that add DTS to the case.</p> <p>See Figure C5.F4. for an explanation of each delivery term code to determine if DTS is being used.</p> | <p>“A. USG agrees to provide transportation services for the items identified in this LOA to the point of delivery. Purchaser’s property will be transported at the purchaser’s risk.</p> <p>B. Purchaser will accept USG delivery listings as the basis for billing and proof of shipment.</p> <p>C. Purchaser will accept responsibility for clearance of materiel through its customs at the Point of Debarkation (POD) and for movement of the materiel from its POD to the ultimate in-country destination.</p> <p>D. Purchaser will appoint a duly authorized official to accept and sign for materiel at the POD, and submit outturn message and report.</p> <p>E. Purchaser will absorb losses of materiel the USG does not in fact recover from an independent carrier or handler, including where the USG is self-insured.</p> <p>F. Purchaser will self-insure such shipments, or obtain commercial insurance without any right of subrogation of any claim against the United States.</p> <p>G. The USG will assist the purchaser in processing any claims that may arise for lost or damaged shipments, in the same manner it processes claims for USG-owned materiel. Collection of revenue, if any, resulting from approved claims will be credited to the purchaser’s account.</p> <p>H. If the purchaser proposes to take delivery and custody of the classified material in the U.S. and use its own facilities and transportation for onward shipment to its territory, a Transportation Plan is required. The Transportation Plan is developed by the DoD Component that prepares the LOA in coordination with the purchasing Government as outlined in the Security Assistance Management Manual, Chapter 3. Purchasers</p> |

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| | | may obtain assistance in the development of the Transportation Plan with their cleared freight forwarder. Further, the purchaser will notify the Implementing Agency of any changes as they occur to the Transportation Plan. The Implementing Agency that initiates the FMS transaction shall designate the security officials who are authorized to evaluate the Transportation Plan to determine whether the plan adequately ensures protection of the highest level of classified material involved. The purchaser will be notified of the approval or disapproval of the plan and any changes. If disapproved, the purchaser will be notified of the reason for disapproval and, when possible, changes that would be acceptable to the USG. As an alternative, the USG will ship the classified material by the Defense Transportation System.” |
| Tube-Launched, Optically-Tracked, Wire-Guided (TOW-2B) Missiles Physical Security and Accountability | Mandatory for LOAs for sales of TOW 2B missiles. The DSCA Country Program Director will be consulted regarding the need to add this LOA note. Mandatory for Amendments and Modifications that add TOW-2B missiles. See Chapter 8, paragraph C8.3.4. | “The [insert SAO] will be permitted, at its discretion, to conduct an inspection and physical inventory of all missiles transferred under this LOA. Upon request, the inventory and accountability records maintained by the purchaser will be made available to the U.S. personnel conducting this inspection.” |
| Unauthorized Use of Defense Articles | Mandatory for LOAs that include any materiel (not applicable to services LOAs). Mandatory for Amendments and Modifications that add materiel lines on a case if the note was not previously included on the case. See Chapter 8, Table C8.T1. | “Defense articles furnished under this Letter of Offer and Acceptance may be used only for those authorized purposes set forth in section 2.2 of the Standard Terms and Conditions, unless the written consent of the U.S. Government has been obtained for a different use. The U.S. Government retains the right to verify reports that such defense articles have been used for purposes not authorized or for uses not consented to by the U.S. Government.” |
| Warranties | Mandatory for LOAs that include additional purchased warranties. Mandatory for Amendments and Modifications that change or add Warranties on the case. See Chapter 6, paragraph C6.3.8. and Chapter 5, Figure C5.F3., paragraph 6. | Varies depending on the warranty. If a purchaser-requested warranty is included as a separate line item on the case (as a defense service), this information may be included in the Line Item Description note. |
| * The “Note Usage” column of this table is intended to show when the note should be included on an LOA, Amendment, and Modification. This table is NOT intended to show when an Amendment or a Modification should be used. See Chapter 6, section C6.7. for information on determining which document is appropriate. | | |

C5.4.8.6. Personnel Protection and Related Costs. For the purpose of performing services outside the United States, the term "U.S. personnel" as discussed below and in Table C5.T5. pertains to personnel involved in the performance of actions under the LOA.

C5.4.8.6.1. In carrying out LOA programs, it is desirable that U.S. personnel operate in safety and immunity in U.S.-type conditions to the extent possible. A Government-to-Government Status of Forces Agreement (SOFA) is commonly used for acquiring safety and immunity for U.S. personnel. When the MILDEP General Counsel indicates a SOFA (see Table C5.T5.) or SOFA-like agreement exists that is pertinent to the specific Security Assistance case, that agreement is referenced in the LOA and noted in the countersignature cover memo highlighting that DSCA (Office of the General Counsel) and OGC, DoD approval may be required.

C5.4.8.6.2. Per the OGC, DoD, inclusion of SOFA-like status provisions in an LOA requires that the LOA be staffed through the Department of Defense in accordance with procedures for staffing international agreements in DoD Directive 5530.3 (reference (aa)). Since these procedures are complex and require the development of specialized supporting documentation, inclusion of status provisions in LOAs should be avoided if possible. Status provisions are not normally used to require compliance when authority to ensure compliance is outside the purchaser's defense establishment. Individual situations should be brought to the attention of DSCA (Operations Directorate) for coordination during LOA preparation.

C5.4.8.6.3. Provisions for recouping costs associated with in-country duty (e.g., currency revaluation, unanticipated import and/or export charges) are covered in the LOA Standard Terms and Conditions and do not normally require special LOA provisions. When it is envisioned that the purchaser may fail to abide by existing SOFA or other status provisions thus increasing costs associated with an FMS program, special notes may be included in the LOA. Table C5.T5. shows sample notes and required purchaser actions that can be used as a guide.

C5.4.8.7. Separate Memorandum of Understanding (MOU) or Detailed Statement of Work (SOW) or Performance Work Statement (PWS). Major programs may call for an MOU, SOW, or PWS, which should be referenced or attached to the LOA. For routine LOAs, a detailed SOW or PWS can be avoided by providing the following information:

C5.4.8.7.1. Description of the service to be performed, together with its purpose;

C5.4.8.7.2. Statement of where and how the service will be performed; and

C5.4.8.7.3. Statement of the anticipated result when the service is completed, together with any information the purchaser should be aware of regarding USG reservations or qualifications to the probable success of the project.

C5.4.8.8. Schedule of Personnel Training. Defined order LOAs should include firm scheduling of personnel into specific training courses. When this is not feasible, LOAs should set forth training plans and schedules in general terms, and should show the need to define training needs at a later date. Blanket order LOAs for training include notes to explain the scope of coverage and methods for definitizing and requesting courses. LOAs must specify purchaser responsibilities such as providing pay and allowances, housing, medical expenses, insurance, qualified students, and any required supervision thereof.

C5.4.8.9. Logistics Information. LOAs show the configuration of equipment being sold, but furnish detailed equipment specifications only if required. Variations from standard USG configurations are noted, together with risks that might be assumed as a result of the variance. The notes highlight any purchase of a configuration contrary to that recommended by the USG.

C5.4.8.9.1. LOAs include any requirement for, and scheduling of, logistics conferences or other program management actions for the purpose of definitization. The costs of such conferences that occur prior to acceptance of the LOA, can be funded from the Administrative Budget Account Allocation of the Implementing Agency, with reimbursement from the LOA after it is accepted. These actions pertain to approved programs and are distinguished from AECA, section 26 survey teams (see Chapter 1, subparagraph C1.3.4.2.).

C5.4.8.9.2. The Implementing Agency assures that at least a 1 year supply of concurrent (initial) spare parts, through fourth echelon, at U.S. peacetime usage rates, is included on the LOA with equipment being offered. Such spare parts packages should be identified on the LOA by category and total value (blanket order line) rather than by article.

C5.4.8.9.3. For offers of MDE items, the purchaser is advised of the estimated period that USG repair parts support is available.

C5.4.8.9.4. If the purchaser has requested that a particular item be provided from a sole source, and the Implementing Agency has approved this request, the sole source designation is included in the notes. (See Table C5.T5.)

C5.4.8.9.5. Any USG intent to develop logistics or maintenance support plans shall be specified.

C5.4.8.9.6. The basis for logistics support costs shall be specified. These should include the period of support of the initial spares package, operational deployment of equipment, level of maintenance to be accomplished by the purchaser, number of maintenance sites, or other basis as applicable.

C5.4.8.9.7. To ensure logistics support of weapons systems, the LOA should identify critical long-leadtime items that must be procured in advance of total program definitization.

C5.4.8.9.8. Known limitations in condition must be shown using codes in Figure C5.F4., paragraph 2.b., or in unique case notes. The LOA should specify that the cost of any rehabilitation is not included in the “as-is” price. The purchaser should normally be invited to inspect, in advance of receipt of the LOA if possible, major items and substantial quantities of excess equipment being sold in “as-is” condition.

C5.4.8.9.9. CLSSA and blanket order LOAs must show supported major items. CLSSA FMSO II LOAs must reference the associated FMSO I LOA.

C5.4.8.9.10. Responsibility for Initiation of Requisitions. The LOA shall show which party is to initiate requisitions. If requisition input is a purchaser responsibility, the LOA contains information to enable correct requisition initiation and routing.

C5.4.9. Manpower on LOAs. Manpower in support of specific FMS programs is provided on FMS cases – either on applicable services lines or included directly in the price of materiel and/or services lines. See Chapter 9, paragraph C9.4.2. for information on pricing and tracking manpower requirements.

C5.4.9.1. Case-Related Manpower Functions and Funding Sources. Table C5.T6. describes case manpower functions and indicates which activities are covered under the FMS Administrative Surcharge and which should be included as line items on the case. Items listed under the “FMS Admin” column should not be included and/or priced on the LOA as these services represent the “Standard Level of Service” covered by the FMS Administrative Surcharge. Requests to deviate from the funding sources shown on this table must be coordinated with DSCA (Business Operations and Strategy Directorates).

C5.4.9.2. Program Management Services. The Implementing Agency may determine that additional USG program management services, beyond those covered in the “Standard Level of Service,” are necessary for successful program implementation and execution.

C5.4.9.2.1. Cases “Accepted” After 1 Aug 06. For LOAs or case line items “accepted” after 1 Aug 06, any justified program management services will be included on well-defined, services line items. The tailored line item description note for each of these line items must include details describing exactly what services will be provided and the length of time they will be performed.

C5.4.9.2.2. Cases “Accepted” Prior to 1 Aug 06. For cases “accepted” prior to 1 Aug 06, program management services were included on Program Management Lines (PMLs). Table C5.T7. identifies the types of sales where PMLs may have been used. PMLs were identified on LOA documents using Generic Code R6B. Generic Code L8A was used on older cases to identify Case Management Lines. While R6B and L8A may no longer be added to cases, PMLs and Case Management Lines that were “accepted” prior to 1 Aug 06 may be used until closure of those cases. Adjustments may be made to these existing PMLs via LOA Modifications or LOA Amendments as long as these adjustments are within the current scope of the PML – no adjustments will be made to increase the scope of these line items. Any additional scope required may be added as new line items in accordance with paragraph C5.4.9.2.1. The FMS Administrative Surcharge is not applied to PMLs. The following must be included on all LOAs, Amendments, or Modifications that include PMLs: “Subtotal Cost of Ordered Articles and Services and PML total value.” The total of these two values is the block (8) value of the document.

Table C5.T6. Case-Related Manpower Functions and Funding Source

| Row # | Core Function(s) | Program Element(s) | Activities | Funding Source (Total value for services, includes per diem, salary, travel) | |
|-------|-----------------------------|--------------------|--|--|--|
| | | | | FMS Admin (Standard Level of Service) | FMS Case |
| 1 | Pre-Letter of Request (LOR) | 1, 4 | Pre-LOR work to support a specific potential FMS program. This includes, but is not limited to, efforts to: Identify defense requirements Provide system and platform information Equipment demonstrations Partner with industry on potential FMS programs Respond to requests [e.g. Requests for Proposal (RFPs)] regarding international competitions with an FMS component | X | If the Pre-LOR work in Row #1 exceeds ¼ work-year or \$25,000 (whichever is greater) and an FMS case results from this activity, then the FMS case refunds the FMS Admin budget from a services line on that case. If no FMS case results from this activity, the FMS Admin budget will not receive a refund. |
| 2 | Pre-LOR | 1, 4 | Site surveys, logistics support conferences, case planning meetings, etc., necessary to delineate/definitize purchaser requirements prior to a request for an Letter of Offer and Acceptance (LOA). | If the Pre-LOR work in Row #2 is not expected to exceed ¼ work-year or \$25,000 (whichever is greater), the costs of these activities may initially be funded with FMS Admin funds. If an FMS case results from this activity, then the FMS case refunds the FMS Admin budget from a services line on that case. If no FMS case results from this activity, the FMS Admin budget will not receive a refund. | If the Pre-LOR work in Row #2 is expected to exceed ¼ work-year or \$25,000 (whichever is greater), an FMS case MUST be written or an existing case amended to cover costs of these activities PRIOR to performing the services (rather than funding initially from FMS Admin). |
| 3 | Case Development | 10 | Responses to requests for information from foreign countries prior to an LOA. | X | If the responses require preparation of reports or other documentation; travel to meetings; etc. that are expected to exceed ¼ work-year or \$25,000 (whichever is greater), this work must be charged to the customer as a |

| Row # | Core Function(s) | Program Element(s) | Activities | Funding Source (Total value for services, includes per diem, salary, travel) | |
|-------|------------------|--------------------|---|---|---|
| | | | | FMS Admin (Standard Level of Service) | FMS Case |
| | | | | | services line on an FMS case. |
| 4 | Case Development | 10 | Preparation of Price and Availability (P&A) Data. | X | <p>P&A data are Rough Order of Magnitude (ROM). If the response requires preparation of reports or other documentation; travel to meetings; etc. then it does not qualify as ROM data. If more than ROM data is required, an LOA should be prepared---see Row #5.</p> <p>If the purchaser requests multiple iterations of a specific request for P&A (ROM) data and work to prepare these additional responses is expected to exceed ¼ work-year or \$25,000 (whichever is greater), this work must be charged to the customer as a services line on an FMS case. This includes requests for multiple iterations based on different quantities, condition, inclusion/exclusion of specified costs, etc.</p> |
| 5 | Case Development | 10 | <p>Development and preparation of LOA documents to include LOAs, Amendments, Modifications, Letters of Intent (LOIs). This includes, but is not limited to:</p> <p>(1) Development of LOA pricing data and notes;</p> <p>(2) Entry of case information into the Defense Security Assistance Management System (DSAMS);</p> <p>(3) Coordination of</p> | <p>FMS Admin-funded for a single preparation of the LOA document.</p> <p>If purchaser requests are made for multiple versions of the same document (e.g., “what if”-type drills), the response should be in the form of P&A data rather than a formal document.</p> | <p>If the purchaser requests multiple LOA, Amendment, or Modification versions, and work to prepare these additional responses is expected to exceed ¼ work-year or \$25,000 (whichever is greater), this work must be charged to the customer as a services line on an FMS case (Either the proposed new FMS case if the LOA document is accepted; or an existing FMS case if the proposed new FMS case is not accepted. Request assistance from DSCA if</p> |

| Row # | Core Function(s) | Program Element(s) | Activities | Funding Source (Total value for services, includes per diem, salary, travel) | |
|-------|------------------|--------------------|---|--|---|
| | | | | FMS Admin (Standard Level of Service) | FMS Case |
| | | | documents; (4) Quality control to ensure legal, financial, and policy compliance; (5) Participation in case-writing related meetings; (6) Preparation of LOA document package information to include: Manpower and Travel Data Sheet Financial Analysis Worksheet (SDAF only) MTCR review results Review of waiver information Checklists; (7) Working with the purchaser to ensure document meets requirements – to include providing DSAMS reports, Manpower Travel and Data Sheet (MTDS) as needed. | | unable to determine which FMS case should be charged). This includes requests for multiple iterations based on different quantities, condition, inclusion/exclusion of specified costs, etc. |
| 6 | Case Development | 10 | Development of Not-to-Exceed (NTE) LOAs. | | Services line on the NTE FMS case to cover “incremental costs” incurred or expected to be incurred based on the purchaser’s request to prepare the LOA using NTE pricing. “Incremental costs” are those costs to cover any work beyond preparation of a case written using current policies and pricing guidelines. [Reference: DSCA memo I-00/006952 dated June 15, 2000.] |
| 7 | Case Development | 10 | Development of an LOA that is “classified” at the request of the purchaser. | See paragraphs C4.5.16. and C5.4.11. for restrictions on classifying LOAs. Development of “classified” LOAs may be Admin-funded if the additional work | If work to prepare this “classified” LOA is expected to exceed ¼ work-year or \$25,000 (whichever is greater), a services line on the “classified” case must be used to cover additional costs incurred or expected to |

| | | | | Funding Source (Total value for services, includes per diem, salary, travel) | |
|--------------|---------------------------------|---------------------------|--|--|--|
| Row # | Core Function(s) | Program Element(s) | Activities | FMS Admin (Standard Level of Service) | FMS Case |
| | | | | required does not exceed ¼ work-year or \$25,000 (whichever is greater). | be incurred with preparation and handling outside the DSAMS document preparation capabilities. |
| 8 | Case Development | 10 | Processing case-related waivers to USG policies and procedures (e.g., nonrecurring cost waivers) [Note: This activity covers the “processing” of these waivers – “developing” nonrecurring cost estimates is not an FMS Admin-funded activity.] | X | |
| 9 | Case Development | 8 | Determine releasability and disclosure decisions for requested articles and services. | Releasability and disclosure activities are not funded by FMS Admin or the FMS case. These activities are funded using Implementing Agency Operations and Maintenance (O&M) funds. | |
| 10 | Case Development | 12 | Missile Technology Control Regime (MTCR) review of FMS case for compliance. | MTCR activities are not funded by FMS Admin or the FMS case. These activities are funded using Implementing Agency O&M funds. | |
| 11 | Case Development | 10 | Case implementation. | X | |
| 12 | Case Execution and Case Closure | 13, 14, 15, 16, 19 | Efforts/services required to execute the case to include, but not limited to: (1) Establish cost, schedule, and performance goals and objectives for execution of the case; (2) Monitor and manage case performance from cradle-to-grave including: scope, schedule of work, cost, payment schedules, problem resolution, financial services, etc.; (3) Conduct USG-internal meetings needed to perform execution activities; (4) Inform purchaser regarding case execution status. See other entries in | X | |

| Row # | Core Function(s) | Program Element(s) | Activities | Funding Source (Total value for services, includes per diem, salary, travel) | |
|-------|------------------|--------------------|--|---|----------|
| | | | | FMS Admin (Standard Level of Service) | FMS Case |
| | | | <p>this matrix for more information on proper source of funding for case review-related meetings;</p> <p>(5) Pull and/or prepare reports needed to monitor case execution status and keep purchaser informed [NOTE: See Row #15 for additional information on reports from the Security Cooperation Information Portal (SCIP)];</p> <p>(6) Initiate, oversee and manage the acquisition process to include processing of Military Interdepartmental Purchase Requests (MIPRs) between agencies;</p> <p>(7) Prepare and process requisitions to include providing appropriate status and tracking/coordination/ problem-solving efforts normally performed by DoD Supply and Inventory Control Points, and International Logistics Control Office to ensure on-time deliveries;</p> <p>(8) Report deliveries, to include both the physical (constructive) delivery of the article/service and the associated financial/billing transactions;</p> <p>(9) Maintain case files;</p> <p>(10) Conduct annual case reviews (in accordance with this manual and the Reconciliation and Closure Manual (RCM))</p> <p>[NOTE: See Rows #18 - #22 for additional information on case reviews.]</p> | | |

| Row # | Core Function(s) | Program Element(s) | Activities | Funding Source (Total value for services, includes per diem, salary, travel) | |
|-------|---------------------------------|--------------------|---|---|--|
| | | | | FMS Admin (Standard Level of Service) | FMS Case |
| | | | <p>(11) Perform reconciliation of financial and logistical management systems until the case is supply/services complete;</p> <p>(12) Process Supply Discrepancy Reports (SDRs). This includes “processing” only and does not include payment of any approved refund or restitution. See SAMM Table C6.T5. for information regarding proper source of funds for payments associated with approved SDRs;</p> <p>(13) Perform case closure activities (to include reconciliation efforts for supply/service complete cases) to include all types of closure.</p> | | |
| 13 | Case Execution and Case Closure | 13, 14, 15, 16 | <p>Execution support beyond that provided as part of Row #12. This support may cover additional acquisition support, dedicated requisition processing, program acceleration (excluding incentive clauses in contracts), expedited closure, etc. This support may be required either:</p> <p>By the USG based on analysis of the requirements (For example: Some weapon systems may require more extensive management from a USG-perspective if they are complex, being newly introduced to a country’s inventory, etc.)</p> <p>By the purchaser request</p> | | Incremental costs above the Standard Level of Service provided in Row #12. LOA notes must clearly define for each of these line items exactly what support beyond the Standard Level of Service is required. |

| Row # | Core Function(s) | Program Element(s) | Activities | Funding Source (Total value for services, includes per diem, salary, travel) | |
|-------|------------------|--------------------|---|---|---|
| | | | | FMS Admin (Standard Level of Service) | FMS Case |
| | | | for additional support (For example: Some cases may require more extensive management or expedited closure from a purchaser-perspective if they have high visibility within the country or if there are internal country requirements for reporting, tracking, etc.) | | |
| 14 | Case Execution | 13, 14, 15, 16 | Efforts/services required to execute a case that is “classified” at the request of the purchaser (i.e., would not be otherwise classified by the USG). | See paragraphs C4.5.16. and C5.4.11. for restrictions on classifying LOAs. | Services line on the “classified” case to cover all additional costs incurred or expected to be incurred with execution outside normal domestic systems and processes (often manual). |
| 15 | Case Execution | 13, 14, 15, 16 | Retrieval of reports and data available from the SCIP. | | Retrieving data from SCIP is not part of the Standard Level of Service provided under the FMS Admin surcharge since the FMS purchaser can pull this data. If the FMS purchaser requests that USG personnel provide data readily available in SCIP, this should be considered a service and included on an FMS case. |
| 16 | Case Execution | 13, 14, 15, 16 | Preparation of reports as requested by the purchaser that are either: (1) more detailed reporting than covered under Row #12; and/or (2) more frequent reporting than covered under Row #12. | | Incremental costs above the Standard Level of Service provided in Row #12. LOA notes must clearly define for each of these line items exactly what support beyond the Standard Level of Service is required. |
| 17 | Case Execution | 13, 14, 15, 16 | Security Assistance accounting and budgeting (to include Defense Accounting and Financial Services (DFAS)). | X | Incremental costs above the Standard Level of Service provided in Row #12. LOA notes must clearly define for each of these line items exactly what support beyond the Standard Level of Service is required. |
| 18 | Case | 13, 14, 15, 16 | Review [Case-Level] | X | |

| Row # | Core Function(s) | Program Element(s) | Activities | Funding Source (Total value for services, includes per diem, salary, travel) | |
|-------|------------------|--------------------|--|---|----------|
| | | | | FMS Admin (Standard Level of Service) | FMS Case |
| | Execution | | <p>Review the individual FMS case (monitoring acquisition and training, tracking requisitions, reviewing financial status, etc.) continuously throughout the life of the case. Conduct meetings and/or prepare correspondence as determined by the USG to keep the case on-track and keep the purchaser informed regarding cost, schedule, and performance of the individual case. The case manager will decide if the case warrants face-to-face meetings to conduct this review or if other means of communication will suffice. Most aspects of case reviews are automated and do not require formal face-to-face reviews, particularly when the case's cost, schedule, and performance are on-track. The purchaser should be encouraged to utilize the SCIP for day-to-day information on one or more specific case(s). Face-to-face or formal meetings to review a specific case should be rare and considered only when significant issues impact cost, schedule, or performance of the case. Each FMS case must include a note that states the number and type of reviews provided as part of the Standard Level of Service for that case. This note must be updated during the life of the FMS</p> | | |

| Row # | Core Function(s) | Program Element(s) | Activities | Funding Source (Total value for services, includes per diem, salary, travel) | |
|-------|------------------|--------------------|--|---|---|
| | | | | FMS Admin (Standard Level of Service) | FMS Case |
| | | | case as required based on changes in the program. | | |
| 19 | Case Execution | 13, 14, 15, 16 | <p>Review [Case-Level (Beyond Row #18)]</p> <p>Case-Level Review support beyond that provided as part of Row #18. This support may cover additional reviews needed to keep the individual FMS case on-track and keep the purchaser informed regarding cost, schedule, and performance and may be required either:</p> <p>By the USG based on analysis of the requirements (For example: USG may determine that the case needs to be reviewed more frequently than Row #18, based on unique aspects of the program that depend on frequent updates)</p> <p>By the purchaser request for specific additional review (For example: The purchaser may request that case-level, face-to-face reviews be conducted more frequently than provided in Row #18)</p> | | <p>Incremental costs above the Standard Level of Service provided in Row #18. LOA notes must clearly define for each of these line items exactly what support beyond the Standard Level of Service is required.</p> <p>[NOTE: This also includes travel and personnel costs when a customer requires specific USG organizational attendance at any meetings above that required by the case manager.]</p> |
| 20 | Case Execution | 13, 14, 15, 16 | <p>Review [Program-Level]</p> <p>Review specific FMS program (e.g., major weapon system acquisition that may consist of multiple cases) for a purchaser. Conduct meetings and/or prepare correspondence as needed to keep the program on-</p> | | <p>This review may overlap some aspects of the Case-Level Review provided in Row #18. If so, incremental costs above the Standard Level of Service provided in Row #18 to perform the Program-Level Review must be case-funded. If there is no overlap between these 2 types of review, all costs for the Program-Level Review</p> |

| Row # | Core Function(s) | Program Element(s) | Activities | Funding Source (Total value for services, includes per diem, salary, travel) | |
|-------|------------------|--------------------|---|---|---|
| | | | | FMS Admin (Standard Level of Service) | FMS Case |
| | | | <p>track and keep the purchaser informed regarding issues impacting the overall program (acquisition and training; deliveries; financial status; cost, schedule, and performance; etc.). Frequency should be consistent with the milestone plan established during case development. These reviews may be required either:</p> <p>By the USG based on analysis of the requirements, or</p> <p>By the purchaser request for specific additional support</p> <p>If this level review is USG-mandated, the case manager will decide (1) how frequently this review is required, and (2) if the program warrants face-to-face meetings to conduct this review or if other means of communication will suffice. If the program involves multiple cases with different case managers, these decisions will be made jointly based on analysis of the requirements.</p> | | <p>must be case-funded. LOA notes must clearly define for each of these line items exactly what support beyond the Standard Level of Service is required.</p> <p>These services may be included on the major acquisition case or spread throughout the individual cases that support the program.</p> |
| 21 | Case Execution | 13, 14, 15, 16 | <p>Review [Implementing Agency-Level]</p> <p>Review all purchaser cases managed by an individual Implementing Agency. Conduct meetings and/or prepare correspondence as needed to keep the cases on-track and keep the</p> | FMS Admin-funded if not specifically requested by the purchaser and the USG determines this is the most efficient method of providing the services identified in Row #18. | FMS case-funded if specifically requested by the purchaser and not determined by the USG as the most efficient method of providing the services identified in Row #18. This review may overlap some aspects of the Case-Level Review provided in Row #18. If so, |

| Row # | Core Function(s) | Program Element(s) | Activities | Funding Source (Total value for services, includes per diem, salary, travel) | |
|-------|------------------|--------------------|---|---|--|
| | | | | FMS Admin (Standard Level of Service) | FMS Case |
| | | | <p>purchaser informed regarding issues impacting their overall program with that Implementing Agency (acquisition and training; deliveries; financial status; cost, schedule, and performance; etc.). Required either:</p> <p>By the USG based on analysis of the requirements, or</p> <p>By the purchaser request for specific additional support</p> <p>If this level review is USG-mandated, the Implementing Agency determines if the standard Case-Level Review requirements provided in Row #18 are more efficiently met by conducting an overall review that includes all the purchaser's cases with that Implementing Agency.</p> | | <p>incremental costs above the Standard Level of Service provided in Row #18 to perform the Implementing Agency-Level Review must be case-funded. If there is no overlap between these 2 types of review, all costs for the Implementing Agency-Level Review must be case-funded. LOA notes must clearly define for each of these line items exactly what support beyond the Standard Level of Service is required.</p> <p>Purchaser-requested reviews of this nature should be conducted under an LOA line item expressly for this purpose.</p> |
| 22 | Case Execution | 13, 14, 15, 16 | <p>Review [Country-Level]</p> <p>Review country's entire FMS program. Conduct meetings and/or prepare correspondence as needed to keep the country's overall FMS program on-track and keep the purchaser informed regarding issues impacting the overall program (acquisition and training; deliveries; financial status; cost, schedule, and performance; etc.). Required either:</p> | FMS Admin-funded if not specifically requested by the purchaser and the USG determines this is the most efficient method of providing the services identified in Row #18. | FMS case-funded if specifically requested by the purchaser and not determined by the USG as the most efficient method of providing the services identified in Row #18. This review may overlap some aspects of the Case-Level Review provided in Row #18. If so, incremental costs above the Standard Level of Service provided in Row #18 to perform the Country-Level Review must be case-funded. If there is no overlap between these 2 types of review, all costs for the Country-Level Review must be case-funded. |

| Row # | Core Function(s) | Program Element(s) | Activities | Funding Source (Total value for services, includes per diem, salary, travel) | |
|-------|------------------|--------------------|---|---|--|
| | | | | FMS Admin (Standard Level of Service) | FMS Case |
| | | | <p>By the USG based on analysis of the requirements, or</p> <p>By the purchaser request for specific additional support</p> <p>If this level review is USG-mandated, DSCA will decide (1) how frequently this review is required, and (2) if the overall program warrants face-to-face meetings to conduct this review or if other means of communication will suffice. This includes Financial Management Reviews (FMRs).</p> | | <p>LOA notes must clearly define for each of these line items exactly what support beyond the Standard Level of Service is required.</p> <p>These services may be included on any case designated by the purchaser or may be spread throughout multiple cases.</p> |
| 23 | Case Execution | 13, 14, 15 | <p>Services such as: studies and surveys; technical assistance; etc. to include, but not limited to, advisory personnel or members of Mobile Training Teams (MTTs); Technical Assistance Field Teams (TAFTs); Contractor Engineering Technical Services (CETS); program task forces; Technical Assistance Teams (TATs); Quality Assurance Teams (QATs); Engineering Change Proposals (ECPs) etc. Required either:</p> <p>By the USG based on analysis of the requirements, or</p> <p>By the purchaser request for specific additional support</p> | | X |
| 24 | Case Execution | 13, 14, 15 | Services provided as a membership in a USG sponsored group such as | | X |

| | | | | Funding Source (Total value for services, includes per diem, salary, travel) | |
|--------------|-------------------------|---------------------------|--|---|---|
| Row # | Core Function(s) | Program Element(s) | Activities | FMS Admin (Standard Level of Service) | FMS Case |
| | | | Technical Coordination Groups (TCG), International Engine Management Program (IEMP), Electronic Combat International Security Assistance Program (ECISAP), Fair Share Sustainment Program (FSSP), Engineering Fair Share Program (ESSP), Apache Coordination Technical Services Improvement Program (ACTSIP), etc. | | |
| 25 | Case Execution | 13, 14, 15 | Services required to produce materiel requested by the purchaser (i.e., engineering services, testing). | | The organic costs incurred are included in the materiel line. |
| 26 | Case Execution | 13, 14, 15 | Services such as: Configuration management, Weapon systems management, Systems integration, and Integrated logistics/training management. Required either: By the USG based on analysis of the requirements, or By the purchaser request for specific additional support | | X |
| 27 | Case Execution | | Transportation, lodging, per diem, or other administrative expenses of foreign Government representatives, even though such expenses may relate to the materiel and/or services being provided on the case. | These services will not be included on FMS cases nor be paid for using Administrative Surcharge funds. Foreign purchasers are responsible for making and paying for these arrangements outside the FMS process. | |
| 28 | Business Sustainment | 22 | Space rental and/or refurbishment charges specifically incurred to | X | |

| Row # | Core Function(s) | Program Element(s) | Activities | Funding Source (Total value for services, includes per diem, salary, travel) | |
|-------|----------------------|--------------------|--|---|--|
| | | | | FMS Admin (Standard Level of Service) | FMS Case |
| | | | support the FMS “community” mission. | | |
| 29 | Case Execution | 13, 14, 15 | Space rental and/or refurbishment charges specifically incurred to support the purchaser/case (e.g., warehousing). | | Incremental costs above the standard level of service provided in Row #28. LOA notes must clearly define for each of these line items exactly what support beyond the Standard Level of Service is required. |
| 30 | Business Sustainment | 26 | Information Technology (IT) services/equipment specifically incurred to support the FMS “community” mission. For dedicated FMS organizations, this includes all IT costs. For non-dedicated organizations, this includes only those incremental IT costs that are attributable to FMS mission performance. | X | |
| 31 | Case Execution | 13, 14, 15 | IT services/equipment specifically incurred to support the purchaser/case. | | X |
| 32 | Business Sustainment | 22 | Supplies and equipment specifically incurred to support the FMS “community” mission. For dedicated FMS organizations (e.g., AFSAC, USASAC, NAVICP-OF), this includes all supply and equipment costs. For non-dedicated organizations, this includes only those supplies and equipment that are attributable to FMS work-years. | X | |
| 33 | Case Execution | 13, 14, 15 | Supplies and equipment specifically incurred to support the purchaser/case. | | X |
| 34 | Business Sustainment | 20 | Job-related skills training (not specifically related to an FMS case) for | X | |

| | | | | Funding Source (Total value for services, includes per diem, salary, travel) | |
|--------------|-------------------------|---------------------------|--|---|-----------------|
| Row # | Core Function(s) | Program Element(s) | Activities | FMS Admin (Standard Level of Service) | FMS Case |
| | | | individuals who spend 50% or more of their time performing FMS-related work. | | |
| 35 | Case Execution | 13, 14, 15 | Job-related skills training specifically related to an FMS case (does not include certification requirements - -- see Row #37). For example: Defensive Driving Course for team members being deployed to a high terrorist threat country | | X |
| 36 | Business Sustainment | 22 | Job-related skills training for individuals who spend less than 50% of their time performing FMS-related work | These training activities are not funded by FMS Admin or the case. These training activities are funded by the same source that pays the employee's salary. | |
| 37 | Business Sustainment | 22 | Training for certified personnel for their continued education required to maintain their certification. | These training activities are normally funded using funds other than FMS Admin or the FMS case. If a certification is required for a position to support an FMS case, a qualified (i.e., certified) person should be selected. Any questions about whether or not training should be Admin-funded should be directed to DSCA (Business Operations Directorate). | |
| 38 | Business Sustainment | 22 | Training for TAFTs or MTTs and other personnel for their direct support to a case (does not include certification requirements - -- see Row #37). | | X |
| 39 | Case Execution | 13, 14, 15 | DoD MILDEP training exercises in support of an FMS case exercise. | | X |
| 40 | Business Sustainment | 22 | Language Training | Language training is not funded by either FMS Admin or the FMS case. If a language skill is required on the case, a qualified person (e.g., someone already proficient in the language to the extent required) should be selected. | |

| | | | | Funding Source (Total value for services, includes per diem, salary, travel) | |
|---|------------------|--------------------|------------|---|----------|
| Row # | Core Function(s) | Program Element(s) | Activities | FMS Admin (Standard Level of Service) | FMS Case |
| <div>1. The Core Functions and Program Elements listed above are used by the USG security cooperation community for tracking and recording costs. They are included here for information purposes only.</div> <div>2. Salaries of US Military personnel (not including Coast Guard) are paid for by MILPERS funds when these personnel are performing activities included in the “FMS Admin” column. When activities in the “FMS Case” column are performed by US military personnel, the salaries of these personnel should be reimbursed by the FMS case unless the case is fully funded with FMF Non-Repayable, Military Assistance Program (MAP) funds, or other USG appropriations.</div> <div>3. When activities in the “FMS Case” column are performed by US civilian personnel, unfunded civilian retirement costs should be included in the pricing except when the case is funded using other USG appropriations. [Note: This exception does not include FMF and MAP.]</div> <div>4. Overtime, awards, or similar personnel actions are funded by the same source that pays the employee’s salary if the employee is full-time, dedicated to that source.</div> <div>5. Definitions of “incremental”: Efforts/costs expended beyond the Standard Level of Service. Only the difference in costs between these efforts and the Standard Level of Service would be charged to the case.</div> <div>6. ¼ work-year equates to 520 hours of a 2080 hour work-year. This and the \$25,000 threshold are not per person – these limits apply to all cumulative work of anyone working on that particular project/program. When adding costs to determine if the \$25,000 threshold has been met, use DoD 7000.14-R, (reference (o)), Volume 15, Chapter 7.</div> <div>7. FMS case funds are not the source of funding for any activity after the case closes.</div> | | | | | |

Table C5.T7. Historical Rules for Use of Program Management Lines (PMLs)

| NOTE: FMS cases “accepted” prior to 1 Aug 06 may have included PMLs. This table provides historical information for the rules that governed the use of PMLs on those cases. No new PMLs may be included on cases (or new case lines) “accepted” on or after 1 Aug 06. | |
|--|---|
| What Types of Sales MAY Include Program Management Lines? | What Types of Sales MAY NOT Include Program Management Lines? |
| System sales of aircraft, ships, shipboard equipment, missiles, combat vehicles, radars, or communications electronics which include the major end item and necessary logistical and training support | Sales from stock other than weapon systems |
| | Follow-on support, including publications, maps, and charts |
| Modifications that improve the operational capability of systems already in purchaser inventories | Entirely for services |
| | Individual major end item sales |
| Non-standard equipment, systems, or services | Modifications other than those that improve the |

| NOTE: FMS cases “accepted” prior to 1 Aug 06 may have included PMLs. This table provides historical information for the rules that governed the use of PMLs on those cases. No new PMLs may be included on cases (or new case lines) “accepted” on or after 1 Aug 06. | |
|---|---|
| What Types of Sales MAY Include Program Management Lines? | What Types of Sales MAY NOT Include Program Management Lines? |
| | operational capability of systems |
| Sales that include program acceleration | Routine non-MDE sales |
| Coproduction programs | |

C5.4.10. Contingency Lines. Contingency lines (R9B Non-Specific Requirements) may be included on FMS cases when requested by the purchaser as a holding place for funds budgeted but not yet programmed. Contingency lines cannot be used to requisition items or to provide services.

C5.4.10.1. Including Contingency Lines on an LOA. The FMS administrative surcharge is applied to the contingency line value. Contingency lines are limited to ten percent or less of the LOA value. LOAs funded with FMF may not include contingency lines.

C5.4.10.2. Execution of Contingency Lines. Obligation authority is not granted for contingency lines. Orders cannot be placed against contingency lines. When requirements are identified by the purchaser, the applicable dollar values included in the contingency line must be moved to specific defense articles or services (non-contingency) lines, with commensurate payment schedule and other LOA adjustments, as needed. LOA Amendments are used for reallocation of contingency line authority.

C5.4.11. Preparing Classified LOAs. Paragraph C5.4.4. provides information on when LOAs may be classified. DSAMS is an unclassified system; therefore classified information cannot be entered into this system even on a temporary basis. The following guidance should be used in preparing classified LOAs.

C5.4.11.1. LOAs Classified on a Temporary Basis. If a case is subject to AECA, section 36(b) (reference (c)) requirements (Congressional Notification), any record that relates the country to the sale items is considered classified until the notification has been formally forwarded to Congress (see section C5.6.). Therefore, these cases cannot be entered into DSAMS using an actual country code combined with an item description. To ensure timelines for LOA preparation and responsiveness are met, however, it may be necessary to begin preparation of the case prior to Congressional Notification. In these instances, the following procedures should be used to write these cases using DSAMS.

C5.4.11.1.1. Pseudo Country Code. A "pseudo" case identifier must be created using a "pseudo" country code and a "pseudo" case designator to ensure the prospective purchaser is not identified. This identifier is used to enter all unclassified case information (including item descriptions) into DSAMS. Using the "pseudo" case identifier allows most of the case information to be entered and helps case-writers continue their work prior to the notification. The purchaser cannot be named in the notes or other supporting data to ensure the information remains unclassified. The user must use caution when entering data under a "pseudo" country code. Many pricing waivers and restrictions are programmed in DSAMS under each specific country. When a "pseudo" country code is used, these waivers are not applied automatically and the user must apply them individually as appropriate. The application of specific pricing within DSAMS could reveal the purchaser (e.g., entering a specific waiver percentage for CAS could identify a list of potential purchasers). In these instances, the pricing is done off-line and only a total price for the line should be entered.

C5.4.11.1.2. Conversion After Notification. After the notification has gone to Congress, the country code should be changed to reflect the actual country code and the remaining case information is entered. Pricing that was not entered into the system to protect the classification, is entered into DSAMS at this time. (The information in this paragraph assumes the case is unclassified after the formal notification has been made to Congress. If the case remains classified, the procedures provided below for purchaser or USG-classified cases must be followed.)

C5.4.11.2. Classified LOAs. In instances where classification is approved, the following procedures should be used to write these cases using DSAMS.

C5.4.11.2.1. The country must be specific in identifying the pieces of data to be classified. For example, some purchasers may wish for the nomenclature of the item to remain classified, others may want to classify the quantity or information that would normally be included as a note.

C5.4.11.2.2. Any piece of information that is considered classified cannot be entered into DSAMS. The bulk of the case (containing all unclassified information) may be created using DSAMS. Any classified information must be entered on the document via other means after the document has been printed (e.g., using a typewriter). Pseudo or generic MASL lines may be used within the system to prevent the item from being disclosed. Using a pseudo MASL line does not allow automated application of pricing and/or waivers that are linked to the real MASL (e.g., NC recoupment charges). The case writer must ensure all appropriate charges are applied. If the application of specific pricing within DSAMS could reveal the item being purchased (e.g., inputting a specific NC value could be used to determine the exact item being sold), the pricing must be done off-line and only a total price for the line should be entered. When pseudo MASL lines are used, the correct MASL lines must be entered on the document off-line after it has been printed. The hard copy document must be marked in accordance with classification guidelines. Costs incurred to write and execute classified cases will be charged to the program in accordance with Table C5.T6.

C5.4.12. Quality Control of LOA Documents. Implementing Agencies must ensure that adequate controls exist to assure mathematical and factual integrity, completeness, and statutory and regulatory (to include financial) compliance of the LOA package.

C5.4.13. Pre-Countersignature Meetings for New LOAs for Major Sales. DSCA (Business Operations Directorate) will convene a meeting on selected “major sales” when warranted. Attendees include DSCA, Implementing Agency, and prime contractor representatives, as appropriate. The purpose of the meeting is to review and ensure the proposed financial payment schedule correlates to the proposed program/delivery plan. The Implementing Agency is responsible for presenting a plan to manage the program/delivery performance schedule within the financial requirements in the payment schedule and should address the contract financing vehicle, anticipated contract payment milestones, and known purchaser budget constraints. For the purpose of this paragraph “major sales” include: sales that trigger Arms Export Control Act 36(b) thresholds or proposed sales that represent an increase of more than 15 percent to the FMS purchaser’s current active program as reflected in the Security Cooperation Information Portal. The Implementing Agency notifies the DSCA Country Financial Director (CFD) at least 15 days prior to submitting an LOA for a “major sale” for countersignature. The DSCA CFD is responsible for scheduling the meeting or informing the Implementing Agency that a meeting is not required.

C5.4.14. DSCA Coordination and Countersignature of LOA Documents. Unless specifically exempted (see Automated State Department Approval (ASDA) procedures below), all LOAs require DSCA countersignature. For those exempted, the countersignature block shows “In accordance with the SAMM.” The DSCA point of entry for LOA document coordination and countersignature is DSCA (Business Operations Directorate). Once Implementing Agencies have approved an LOA document, they submit it to DSCA using electronic procedures for countersignature if applicable. Electronic countersignature procedures are mandatory for all cases that require countersignature. DSCA continues to accept hardcopy documents for emergency situations and classified cases.

C5.4.14.1. The electronic countersignature process requires the use of DSAMS and Adobe Acrobat © for portable document format (pdf) file creation. All packages must be submitted in the standard bookmark format. The pdf files are for internal USG coordination and should be marked "Draft."

C5.4.14.2. When the Implementing Agency enters the MILSGN milestone in DSAMS, the document automatically moves to “proposed” status if countersignature is required. DSAMS automatically notifies DSCA when case documents have moved to "proposed" status. The Implementing Agency must send an e-mail no later than 24 hours of this notification with all applicable files (document, manpower worksheet, etc.) requesting DSCA approval. All e-mails submitting packages for countersignature must be sent to: loa-dsca@dsca.mil. DSCA cannot review the package until both of these actions have taken place. If the e-mail is not received within 24 hours, DSCA rejects the document and requires Implementing Agency resubmission. If system problems prevent meeting this requirement, please contact DSCA (Business Operations Directorate).

C5.4.14.3. In order to ensure electronic package consistency, Table C5.T8. provides the specific naming convention for files submitted for countersignature. Each file name starts with the case identifier and then indicates which version of the document is being submitted. The file name should also include an abbreviation for the specific attachment that is being provided (i.e., termination liability worksheet, financial analysis worksheet, etc.).

Table C5.T8. Sample File Naming Conventions Required for DSAMS Electronic Countersignature

| Sample File Naming Conventions Required for DSAMS Electronic Countersignature* | |
|---|--|
| File Name | Document Applies To |
| BN-B-SAA-BASIC-PKG.pdf | Master pdf file which includes subfiles as required |
| BN-B-SAA-BASIC-LOR.pdf | Letter of Request for the basic case |
| BN-B-SAA-BASIC.pdf | Letter of Offer and Acceptance (LOA) |
| BN-B-SAA-BASIC-FAW.pdf | Financial Analysis Worksheet (FAW) for the basic case (Only required for Special Defense Acquisition Fund (SDAF) cases.) |
| BN-B-SAA-BASIC-MNP.pdf | Manpower and Travel Data Sheet for the basic case, as required |
| BN-B-SAA-BASIC-MTCR.pdf | Missile Technology Control Regime (MTCR) information for the basic case |
| BN-B-SAA-BASIC-RESTATE.pdf | Restatement of the basic case |
| BN-B-SAA-BASIC-REV1.pdf | Revision 1 to the basic case -- used when the case is rejected and returned with changes made |
| BN-B-SAA-A01.pdf | Amendment 1 to the LOA |
| BN-B-SAA-A05-NCWAIVER.pdf | Nonrecurring Cost (NC) Waiver information for A05 |
| BN-B-SAA-M03-REV1.pdf | Revision 1 to M03 -- used when the modification is rejected and returned with changes made |
| BN-B-SAA-LOI.pdf | Letter of Intent (LOI) |
| <p>* This list is not all-inclusive. File names provided are samples only.</p> <p>The e-mail sent to DSCA should also include the case identifier in the subject line and should indicate what action is required (i.e., approval, resubmittal, etc.). For example: "BN-B-SAA-BASIC Approval Request." The individual file conventions are used when documents are not included as part of the Basic, Amendment, or Modification package.</p> | |

C5.4.14.4. DSCA reviewers enter comments in the "Case Remarks" section of DSAMS. Since this field is at the case level and does not automatically identify which document version the reviewer is commenting on (e.g., Amendment 2, Modification 1, Basic LOA, etc.), DSCA reviewers must use a specific format when creating a title for their comments. The title must be entered as follows: Document Version, Revision Number (if applicable), Individual's Office, Accept/Reject/Return. A sample entry might read: "A02, Rev2, ERASA-ASA, Accept." DSCA reviewers must enter Case Remarks for all rejections and/or returns. Comments for acceptances are optional.

C5.4.14.5. Implementing Agencies should use DSAMS Management Flags to provide notification, as a minimum, when documents have been countersigned by DSCA (Milestone - DCSGN), returned from DSCA (Milestone - DDOCRTN), or rejected from DSCA (Milestone - DCSGNRJ).

C5.4.14.6. DSAMS allows holds and suspensions to be placed on documents. These capabilities cannot be used as a substitute for rejecting documents or for moving documents through the process in a timely manner. Holds do not "stop the clock" - the time period during which the case is on hold is included in the LOA processing metric time calculations.

C5.4.14.7. When the case is countersigned and the Implementing Agency receives notification that the case is in "offered" status, the Implementing Agency signs the document and sends it to the purchaser.

C5.4.14.8. For Taiwan case documents, all milestones are entered in DSAMS and the Implementing Agency is responsible for transferring signature dates and information onto the cover memorandum to the American Institute in Taiwan.

C5.4.14.9. For emergency situations and classified cases, the Implementing Agency enters all DSAMS milestones and notifies DSCA in advance that these documents are being processed in hardcopy form.

C5.4.14.10. The Automated State Department Approval (ASDA) allows certain cases to be approved by State without DSCA countersignature. DSAMS processes ASDA transactions on a daily basis. For ASDA eligible cases, Implementing Agencies do not forward pdf packages or files to DSCA. Table C5.T9. shows which cases may or may not be processed under ASDA. Implementing Agencies should annotate “In accordance with the SAMM” on the DSCA countersignature line on ASDA LOAs, Amendments, and Modifications. The DSCA countersignature line date should reflect the date of DoS approval or later.

Table C5.T9. Automated State Department Approval (ASDA) Eligibility

| Case Documents That CAN Be Processed Under ASDA | Case Documents That CANNOT Be Processed Under ASDA |
|---|--|
| Blanket Order LOAs and Amendments | Any documents that do NOT require State Department approval |
| CLSSA LOAs and Amendments | Cases Involving Foreign Military Financing (FMF), Including Residual Military Assistance Program (MAP) Merger or Third Country Financing |
| Defined Line Training LOAs and Amendments | Colombia |
| | Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance (C4ISR) cases |
| | Concurrent Modifications |
| | Defined Line LOAs, Amendments, and Modifications, Other Than for Training |
| | El Salvador |
| | Excess Defense Articles (EDA) |
| | Greece |
| | Honduras |
| | Indonesia |
| | Japan with Dual Payment Schedules |
| | Jordan |
| | LOA Documents Associated with Pilot/Test Programs |
| | LOA Documents Associated with the Joint Strike Fighter |
| | LOAs With Waived Costs (Except Where Previously Approved) |
| | LOAs, Amendments, or Modifications Included in AECA, section 36(b) Notifications |
| | LOIs and LOI Amendments |
| | Medical Countermeasures |
| | Non-AECA LOA documents (e.g. any documents being prepared under Foreign Assistance Act (FAA) authorities) |
| | Pakistan |
| | Saudi Arabia |
| | Special Defense Acquisition Fund (SDAF) |
| | Taiwan |
| | Technical Data Packages (TDPs) |
| | Turkey |
| | Uruguay |
| | Venezuela |

C5.4.15. Documents to Accompany LOAs During Coordination

C5.4.15.1. Letter of Request. The LOR must be included in all electronic LOA packages submitted to DSCA for countersignature.

C5.4.15.2. Manpower and Travel Data Sheet. All LOA documents that include manpower (program management or any other manpower) must include a Manpower and Travel Data Sheet as part of the electronic package. See Chapter 9, Figure C9.F1. for more detailed information on this worksheet.

C5.4.15.3. Financial Analysis Worksheet (FAW). All LOA documents for Special Defense Acquisition Fund (SDAF) materiel must include a FAW as part of the electronic package. See Chapter 11, section C11.14. for more detailed information on SDAF.

C5.4.15.4. Missile Technology Control Regime (MTCR). Any information regarding MTCR items that may be on the case, must be included as part of the electronic package. See Chapter 3, section C3.2. for more information on MTCR.

C5.4.15.5. Previous Versions of the Document. When LOA documents are restated, a copy of the previously approved version must be included along with the restated version as a part of the electronic package. When LOA documents have been rejected and are resubmitted for countersignature, the electronic package must include the rejected version as well as the new version.

C5.4.15.6. Other Documents. If there are any waivers or unique circumstances related to the case, applicable documentation should be included as part of the electronic package.

C5.4.16. Restatements. There may be times when major changes need to be made to a document after it has been countersigned and offered to the purchaser. If the purchaser wants to retain the existing designator (instead of canceling the offer and issuing a new case), the offered case may be restated. Restatements can be made as long as: the document is in “offered” status, the purchaser has not yet signed the case, the OED has not yet expired, and all changes are consistent with FMS policies and procedures. Restated documents must be coordinated and countersigned using the same procedures as the original case. Restated documents must clearly state that they are restated and supersede the previously offered version.

C5.4.17. Pen and Ink Changes. There may be times when minor changes need to be made to an LOA after it has been countersigned and offered to the purchaser. Minor changes can be made as long as: the LOA is in “offered” status, the purchaser has not yet signed the LOA, the OED has not yet expired, and all changes are consistent with FMS policies and procedures. The purchaser should be authorized via message or memorandum to make any Pen and Ink changes, with a copy to DFAS Denver. DSAMS must be updated with any changes. Pen and Ink changes should be kept to a minimum, with processing as follows:

C5.4.17.1. OED Changes. Normally, the greater the period of time between offer and acceptance, the greater the likelihood of decreased accuracy of data. Requests by the purchaser to extend the expiration date are honored only after a review by the Implementing Agency. The Implementing Agency must ensure all pricing data are still valid for the extended period. All concerned should be advised of any consequences associated with the extension.

C5.4.17.2. Minor Changes. Minor changes may include insignificant technical corrections such as a small arithmetic change which does not increase total value and administrative changes such as an address correction, initial deposit or payment schedule adjustment, or minor changes to note wording. The Implementing Agency may review and approve these changes.

C5.4.17.3. Major Changes. More significant changes, such as an increase in program scope (including a revision of the terms of sale or total costs) generally require a new or restated document. Pen and Ink changes for scope increases may be done only in exceptional circumstances and with DSCA (through DSCA (Business Operations and Strategy Directorates) concurrence. Changes initiated after the purchaser has signed the LOA are accomplished through a corrective Amendment or Modification implemented subsequent to the basic LOA. (See Chapter 6, subparagraphs C6.7.1.4. and C6.7.2.4.)

C5.4.17.4. Unauthorized Pen and Ink Changes. When an LOA is signed by the purchaser and returned to the Implementing Agency with unauthorized Pen and Ink changes, it is processed as a counteroffer. The LOA should be restated and reoffered, or cancelled and a new LOA prepared.

C5.4.18. LOA Acceptance. LOA acceptance occurs when an authorized purchaser's official signs the LOA and provides any required initial deposit to the DFAS Denver. Once accepted, the FMS case is a Government-to-Government agreement between the foreign Government or international organization and the United States.

C5.4.18.1. In addition to signing the LOA, the purchaser must complete the "Typed Name and Title," "Agency," and "Information to be Provided by the Purchaser" fields on the LOA.

C5.4.18.2. When the LOA has been accepted or rejected, the SAO advises DSCA and the Implementing Agency by priority message. When LOAs are accepted for a foreign country or international organization not served by an SAO, or where LOAs are often routinely signed without direct SAO involvement, the LOA includes a note requiring the signature authority to notify DFAS Denver and the Implementing Agency of the acceptance date.

C5.4.18.3. The purchaser should forward copies to the Implementing Agency and to DFAS Denver in accordance with the distribution instructions on the LOA.

C5.4.19. LOA Period of Performance. An accepted and/or implemented FMS case is effective until all articles offered are delivered and all services have been performed. Blanket order LOAs remain in effect until the purchaser has requisitioned articles or services up to funds available on the LOA.

C5.5. LOR RESPONSES – LETTER OF INTENT (LOI)

C5.5.1. Definition. There may be times when items being purchased have a long lead time or a short procurement cycle that require financing before an LOA or Amendment can be processed. In these cases, an LOI may be written, signed, and implemented allowing the items to be contracted or services to begin. "Items" in this context are portions of line items that are eventually included on the LOA or Amendment. Examples of use include early purchase of castings or start of training to allow a program to proceed on schedule. Since LOIs entail a risk that the program of which they are part may not proceed, LOIs should be used only when required to allow a program to proceed on schedule and within the projected cost. LOIs may be written either prior to issuance of an LOA and/or Amendment or during the period between issuance of an LOA and/or Amendment and signed acceptance of an LOA and/or Amendment. When the Purchaser requests cancellation of the program associated with an implemented LOI, the LOI will be converted into an LOA document that will be implemented and closed at actual costs.

C5.5.2. Timeframe for Preparation. There is no established number of days within which an LOI should be prepared since each circumstance is different. LOIs should be prepared as soon as it is recognized that one is necessary.

C5.5.3. Classification of LOIs. LOI classification follows the same rules as LOA classification. See paragraph C5.4.4.

C5.5.4. Format. LOIs are prepared using DSAMS. The LOI format and preparation instructions are provided in Figures C5.F6. through C5.F8. Deviations from this format are not authorized. The LOI uses the same designator as the associated LOA. The LOI should include the line item number and line (including MASL) data that is included on the LOA or Amendment.

C5.5.5. Limitation of Cost or Funds. Cost reimbursement contracts awarded to implement an LOI must include a Limitation of Cost or Funds clause (Parts 52.232-20, 52.232-21, and 52-232.22 of the FAR (reference (ak))). The clause may be deleted by contract amendment after the purchaser's acceptance of the LOA.

C5.5.6. AECA, Section 36(b) Applicability. When the associated LOA requires AECA, section 36(b) (reference (c)) reporting, the Director, DSCA must approve the LOI. If the LOI data falls within the thresholds for section 36(b) reporting, such reporting must be completed prior to any LOI implementing action. If Congressional Notification is required and is not yet completed when the LOI is processed, the LOI must include a note as worded in Table C5.T5. (Congressional Notification – LOI). Congressional Notification must be completed before the LOI can be implemented.

C5.5.7. Quality Control of LOI Documents. Implementing Agencies must ensure that adequate controls exist to assure mathematical and factual integrity, completeness, and statutory and regulatory (to include financial) compliance of the LOI package.

C5.5.8. DSCA Coordination of LOI Documents. All LOIs must be coordinated and countersigned by DSCA. See paragraph C5.4.14 for electronic countersignature procedures.

C5.5.9. LOI Amendments. If an implemented LOI needs to be revised prior to acceptance of the associated LOA, an LOI Amendment may be accomplished. LOI Amendments are done using DSAMS and must follow the format and preparation instructions in Figures C5.F9. and C5.F10. All LOI Amendments require DSCA coordination and countersignature. A copy of the basic LOI and any previous amendment(s) must accompany each LOI Amendment submitted to DSCA.



Letter of Intent (LOI)

BN-Q-SJB

The Embassy of Bandaria Office of the Air Attaché 1234 Massachusetts Ave, NW Washington, DC 29999, acting through its Ministry of Defense (hereafter referred to as the Purchaser), hereby declares its firm intent to procure, under United States Arms Export Control Act (AECA) procedures, from the Government of the United States (USG), the defense articles or defense services set forth herein.

Initial Deposit: \$ 2,076,000

Cash With Acceptance

It is understood that the Defense Security Cooperation Agency plans to present to the Purchaser a Letter of Offer and Acceptance within 60 days after signature of the Letter of Intent.

The undersigned are authorized representatives of their Governments and hereby commit their Governments to this Letter of Intent (LOI):

Date

Typed Name and Title

Agency

06 Jun 2006

Date

Figure C5.F6. Sample Letter of Intent (LOI) (continued)

This LOI pertains to the following:

| (1) Itm Nbr | (2) Description/Condition | (3) Qty, Unit of Issue | (4) Total Costs |
|-------------------|--|---------------------------------|--------------------|
| 001 | B2G 9B2G00MAVERCK (Y) MAVERICK MISSILE AGM 65F/G | 60 EA | \$2,000,000 |

Estimated Cost Summary:

| | |
|---------------------------|-------------|
| (5) Net Estimated Cost | \$2,000,000 |
| (6) Administrative Charge | \$76,000 |
| (7) Total Estimated Cost | \$2,076,000 |

To assist in fiscal planning, the USG provides the following anticipated costs of this LOI:

ESTIMATED PAYMENT SCHEDULE

| | | |
|-----------------|-----------|-------------|
| Payment Date | Quarterly | Cumulative |
| Initial Deposit | | \$2,050,000 |

Signed Copy Distribution:

1. Upon acceptance, the Purchaser should return one signed copy of this LOI to Defense Finance and Accounting Service, Denver, ATTN: DFAS-ADY/DE, 6760 E. Irvington Place, Denver, CO 80279-2000. Simultaneously, wire transfer of the initial deposit or amount due with acceptance of this LOI document (if required) should be made to financial institution identifier 021030004 TREAS NYC, Agency Location Code 00003801, showing "Payment from Government of Bandaria for BN-Q-SJB," or a check for the initial deposit, made payable to the U.S. Treasury, mailed to DFAS-ADCTA/DE, P.O. Box 173659, Denver, CO 80217-3659, showing "Payment from Government of Bandaria for BN-Q-SJB." Wire transfer is preferred.

2. One signed copy should be returned to Director, Defense Security Cooperation Agency, 201 12th St South, Suite 203, Arlington VA 22203-5408.

Lines and notes are included for illustration purposes only.

Note 1. LINE ITEM 001 – AGM 65F/G Missiles.

Line Item 001 provides [Insert enough information to adequately describe each line included on the LOI (e.g., configuration, delivery schedule, etc.)]

LOI BN-Q-SJB
Page 2 of 4 pages

Figure C5.F6. Sample Letter of Intent (LOI) (continued)

Note 2. Short Offer Expiration Date.

[Insert rationale for why the Offer Expiration Date (OED) is less than the number of days normally provided to the purchaser if a short OED is being used.]

Note 3. Nonrecurring Costs -Waiver.

Nonrecurring Costs (NC) apply to line item(s) 001 of this LOI. The customer's request to wave these charges has been approved by DSCA memorandum I-06/12345, 4 Mar 06. Therefore, these costs have not been included in this case.

Note 4. Offset Costs.

The Department of Defense is not a party to any offset agreements/arrangements which may be required by the Purchaser in relation to the sales made in this LOA and assumes no obligation to administer or satisfy any offset requirements or bear any of the associated costs. To the extent that the Purchaser requires offsets in conjunction with this sale, offset costs may be included in the price of contracts negotiated under this LOA. If the Purchaser desires visibility into these costs, this should be discussed with the contractor at the time the offset agreement is signed. The contracting officer will ensure that the offset costs priced into the FMS contract are reasonable and consistent with the offset agreement.

Note 5. Anti-Tamper (AT) Measures.

The United States Government (USG) may incorporate Anti-Tamper (AT) protection into systems and components. The AT protection will not impact operations, maintenance, or logistics provided that all terms delineated in the system technical documentation are followed.

Note 6. Missile Technology Control.

Paragraph 2.3 of the Standard Terms and Conditions of the LOA discusses use and transfer restrictions on articles and services provided under the LOA and emphasizes that the Purchaser "shall not use or permit their use for purposes other than those authorized, unless the written consent of the USG has first been obtained." The customer agrees not to divert articles and services received under the LOA for purposes or uses other than those for which furnished to include, but not limited to, use as MTCR equipment or technology as discussed in section 74 of the AECA (22 USC 2797c). The USG also reserves the right to take action under section 73(a)(2) of the AECA (22 USC 2797b(a)(2)) in the case of any export or transfer of any MTCR equipment or technology that contributes to the acquisition, design, development or production of missiles in a country that is not an MTCR adherent.

Note 7. Unauthorized Use of Defense Articles.

Defense articles furnished under the LOA may be used only for those authorized purposes set forth in section 2.2 of the Standard Terms and Conditions, unless the written consent of the U.S. Government has been obtained for a different use. The U.S. Government retains the right to verify reports that such defense articles have been used for purposes not authorized or for uses not consented to by the U.S. Government.

Note 8. Administrative Surcharge.

An administrative surcharge of 3.8% has been applied to line 001.

LOI BN-Q-SJB
Page 3 of 4 pages

Figure C5.F7. Letter of Intent (LOI) Standard Terms and Conditions

LETTER OF INTENT STANDARD TERMS AND CONDITIONS

1. Except to the extent directly inconsistent with the provisions hereof, the terms and conditions set forth in "Letter of Offer and Acceptance Standard Terms and Conditions" of the Letter of Offer and Acceptance on which this LOI is based will apply to all activities undertaken pursuant to this LOI, and the estimated costs of such activities will be included in the Letter of Offer and Acceptance. In particular, Conditions 2.2, 2.3, and 3 are hereby incorporated by reference and made an integral part of this LOI. This LOI shall be superseded upon Purchaser's signature of the Letter of Offer and Acceptance.
2. In anticipation of the Purchaser's signature of the above-mentioned Letter of Offer and Acceptance, the Purchaser Government commits to the following:
 - 2.1. If, prior to Purchaser signature of the above mentioned Letter of Offer and Acceptance, the U.S. DoD has reason to believe that the costs which it expects to incur in the performance of this LOI will exceed the estimated amount, it shall promptly notify the Purchaser in writing to that effect. The notice shall state the estimated amount of and the date by which the additional obligational authority (by a new or amended LOI) will be required from the Purchaser in order to continue performance.
 - 2.2. If, after such notification, the additional obligational authority is not granted by the date set forth in the notification, the U.S. Government is authorized, at its discretion, to terminate any and all activities under this LOI at Purchaser's expense, in accordance with section 2.3 below.
 - 2.3. The Purchaser agrees to pay the full amount of such authorized obligations and to make funds available in such amounts and at such times as may be requested by the U.S. Government for expenditures against such obligations.
3. This LOI does not prejudice the Purchaser's decision on the acceptance of the Letter of Offer. Moreover, the Purchaser may cancel all or any part of this LOI at any time by notifying the U.S. Government. Upon receipt of such notification the U.S. Government is authorized to terminate any and all activities initiated hereunder, at Purchaser's expense, in accordance with section 2.3 above.
1. Certain items for which procurements may be initiated hereunder are normally the subject of definitization conferences, at which specific items and quantities are agreed upon. If it is necessary to place any such items on order prior to any such conference, the U.S. DoD is authorized to do so, using its best judgment, and will furnish a list of the items so ordered at the conference.

LOI BN-Q-SJB
Page 4 of 4 pages

Figure C5.F8. Instructions for Preparing a Letter of Intent (LOI)

| Instruction for Preparing a Letter of Intent (LOI) |
|---|
| 1. <u>Case Identifier</u> . Each case includes a unique case identifier composed of the country code, the Implementing Agency code, and a three-position code assigned by the Implementing Agency (e.g., xx-x-xxx). The LOI uses the same designator as the associated LOA. |
| 2. <u>Purchaser's Reference</u> . The LOR date, serial number, etc. is entered in the "Based on" field. |
| 3. <u>Term(s) of Sale</u> . The Term(s) of Sale indicate when payments are required and whether the LOI is financed with cash or credit. Chapter 9, Table C9.T8. provides details on the various types. The terms must be recorded on the first page of each LOI. Cases, which include multiple sources of funding, must list all sources and include a dollar breakout for each credit term used. |
| 4. <u>DSCA Congressional Notification Transmittal Number</u> . Include the DSCA transmittal number used in the statutory Congressional notification (e.g., Congressional Notification 92-15) when applicable. When multiple notification numbers apply, they must all be listed. |
| 5. <u>Standard Terms and Conditions Paragraph</u> . See sample LOI (Figure C5.F7.) for standard wording. |
| 6. <u>LOA Paragraph</u> . Insert one of the following paragraphs as applicable: If the LOA has not yet been offered to the purchaser: "It is understood that the [insert Implementing Agency] plans to present to the purchaser a Letter of Offer and Acceptance within 60 days after signature of the Letter of Intent." If the LOA has already been offered but not yet accepted by the purchaser: "A Letter of Offer and Acceptance for the items included on this LOI was issued to the purchaser by the [insert Implementing Agency] on [insert date]. The purchaser intends to sign the Letter of Offer and Acceptance not later than [insert expected signature date]." |
| 7. <u>Offer Expiration Date (OED)</u> . Each LOI includes an OED indicating the last date on which the purchaser may accept the offer. The OED varies depending on circumstances. |
| 8. <u>Item Number</u> . Each case includes three position numeric case line numbers. |
| 9. <u>Description/Condition Field</u> . For each line item this field must include a Generic Code and MASL line data, NSN or part number (if applicable), MDE (Y)/non-MDE (N) code, a description of the articles or services, whether the materiel is classified or unclassified, and the condition code (if other than A1 condition) or reference to a note in which the condition is shown. Appendix 4 of the SAMM contains the entire list of Generic Codes. References to other information within the LOI may also be included, e.g., for weapon systems, the reference may relate to an attachment or note of the LOI that includes more descriptive information. The LOI contains a separate line for each article that is measured in units (unit of issue "EA"). For LOIs with more than one significant article or service, lines are listed in order from most to least substantial. After the major items, the remaining lines are in order by generic code. The purpose of this order is for ease of reading. If there are compelling reasons for listing the lines in a different order, the Implementing Agency may decide to do so on a case-by-case basis. Sublines are used to the extent they are compatible with MASL breakout and reporting by generic code. Sublines are identified with a lower case alpha character in this field. |
| 10. <u>Quantity, Unit of Issue, and Unit and Total Costs</u> . This information is entered, as applicable. Where the unit or extended price exceeds \$100, cost information may be rounded to the nearest whole dollar. Total costs for each line are always in whole dollars. See DoD 7000-14.R (reference (o)), Volume 15, Chapter 7 for information on how to price. |

Instruction for Preparing a Letter of Intent (LOI)

11. **Charges on the LOI.** Chapter 9 and the DoD 7000-14.R (reference (o)), Volume 15, Chapter 7 identify specific pricing policies for FMS cases. The LOI includes a Net Estimated Cost, which represents the total of all line items on the case. Separate entries identify administrative accessorial charges that are included. These figures are added to the Net Estimated Cost to provide a Total Estimated Cost. With the exception of the administrative surcharge, the percentage rate used for determining accessorial costs should not be indicated in the LOI. A note is included indicating the percentage of administrative surcharges that are being applied against each line item (see Table C5.T5.). When calculating the administrative surcharge, if the calculated amount is less than \$15,000, a Small Case Management Line (SCML) must be added as a line item on the LOI to recover the difference between the calculated administrative surcharge and \$15,000. See paragraph C9.4.7. for more information on the SCML.

12. **Estimated Payment Schedule.** The initial deposit should include the amount needed until a payment can be made. A payment schedule should be included to cover the remaining payments.

13. **Ordering of LOI Notes.** Notes should be included to provide detailed information about what is being sold. Table C5.T5. provides information on mandatory notes. To ensure consistency, notes should be included in the following order.

| Order | Description |
|-------|--|
| 1 | Line item description notes. Each line should have a separate item description note. The sample LOI in Figure C5.F6. has one line so there is one item description note. If all line item description information fits beneath the MASL description, a line item description note is not required. If any one line item requires a line item description note, a line item description note must be included for each line item. |
| 2 | Case unique notes, e.g., description of the system, any purchaser responsibilities, etc. |
| 3 | Mandatory notes unique to the system being sold, e.g., Man-Portable Air Defense System (MANPADS), Communications Security (COMSEC), and Anthrax Vaccine. |
| 4 | Notes regarding waivers, e.g., CAS, NC. |
| 5 | Standard notes required on all cases, e.g., administrative surcharge, unauthorized use, anti-tampering, MTCR, Offsets, Accessorial Charges, etc. |

Figure C5.F9. Sample Letter of Intent (LOI) Amendment


| | | | |
|--|--|--|--|
|  | | United States Department of Defense Letter of Intent (LOI) BN-Q-SJB | |
| | | | |
| <p>The Embassy of Bandaria Office of the Air Attaché 1234 Massachusetts Ave, NW Washington, DC 29999, acting through its Ministry of Defense (hereafter referred to as the Purchaser), hereby declares its firm intent to procure, under United States Arms Export Control Act (AECA) procedures, from the Government of the United States (USG), the defense articles or defense services set forth herein.</p> | | | |
| <p>This LOI Amendment increases the cost of the LOI from \$2,076,000 to \$2,595,000.00 due to increased contractor requirements</p> | | | |
| <p>Basic LOI accepted: 10 Jun 2006</p> | | | |
| <p>Estimated Cost: \$ 2,595,000</p> | | <p>Due with Amendment Acceptance: \$519,000</p> | |
| <p>Terms of Sale: Cash With Acceptance</p> | | | |
| <p>This Amendment consists of page 1 through page 2 and expires on 9 Jul 2006.</p> | | | |
| <p>The undersigned are duly authorized representatives of their Governments and hereby respectively offer and accept this Amendment:</p> | | | |
| <p>_____</p> | | <p>_____</p> | |
| <p>U.S. Signature</p> | | <p>Purchaser Signature</p> | |
| <p>_____</p> | | <p>_____</p> | |
| <p>Typed Name and Title</p> | | <p>Typed Name and Title</p> | |
| <p>_____</p> | | <p>_____</p> | |
| <p><u>Defense Security Cooperation Agency</u></p> | | <p>_____</p> | |
| <p>Implementing Agency</p> | | <p>Agency</p> | |
| <p>_____</p> | | <p>_____</p> | |
| <p><u>DSCA Reviewed/Approved</u></p> | | <p><u>06 Jun 2006</u></p> | |
| <p>DSCA (Business Operations/Comptroller)</p> | | <p>Date</p> | |
| <p>_____</p> | | <p>_____</p> | |
| <p>LOI BN-Q-SJB (A1) Page 1 of 2 Pages</p> | | | |

Figure C5.F9. Sample Letter of Intent (LOI) Amendment (continued)

This LOI Amendment consists of changes as follows:

| (1) Item Nbr | (2) Description/Condition | (3) Qty, Unit of Issue | (4) Total Costs |
|--------------------------------|--|------------------------------|--------------------|
| <u>PREVIOUS</u> | | | |
| 001 | B2G 9B2G00MAVERCK (Y) MAVERICK MISSILE AGM 65F/G | 60 EA | \$2,000,000 |
| <u>REVISED</u> | | | |
| 001 | B2G 9B2G00MAVERCK (Y) MAVERICK MISSILE AGM 65F/G | 60 EA | \$2,500,000 |
| Estimated Cost Summary: | | | |
| | <u>Previous (B)</u> | <u>Revised</u> | |
| (5) Net Estimated Cost | \$2,000,000 | \$2,500,000 | |
| (6) Administrative Charge | \$76,000 | \$95,000 | |
| (7) Total Estimated Cost | \$2,076,000 | \$2,595,000 | |

To assist in fiscal planning, the USG provides the following revised anticipated costs of this LOI:

ESTIMATED PAYMENT SCHEDULE

| Payment Date | Quarterly | Cumulative |
|---|-----------|-------------|
| Previous Payments Scheduled (15 Jun 03) | | \$2,076,000 |
| Current USG Financial Requirements | | \$2,595,000 |
| Amount Received From Purchaser | | \$2,076,000 |
| Due With Amendment Acceptance | \$519,000 | \$2,595,000 |

Signed Copy Distribution:

1. Upon acceptance, the Purchaser should return one signed copy of this Amendment to Defense Finance and Accounting Service, Denver, ATTN: DFAS-ADY/DE, 6760 E. Irvington Place, Denver, CO 80279-2000. Simultaneously, wire transfer of the initial deposit or amount due with acceptance of this Amendment (if required) should be made to financial institution identifier 021030004 TREAS NYC, Agency Location Code 00003801, showing "Payment from Government of Bandaria for BN-Q-SJB," or a check for the initial deposit, made payable to the U.S. Treasury, mailed to DFAS-ADCTA/DE, P.O. Box 173659, Denver, CO 80217-3659, showing "Payment from Government of Bandaria for BN-Q-SJB." Wire transfer is preferred.

2. One signed copy should be returned to Director, Defense Security Cooperation Agency, 201 12th St South, Suite 203, Arlington VA 22203-5408.

Lines and notes are included for illustration purposes only.

Note 2. Short Offer Expiration Date (REVISED).

[Insert rationale for why the Offer Expiration Date (OED) is less than the number of days normally provided to the purchaser if a short OED is being used.]

Note 8. Administrative Surcharge (REVISED).

An administrative surcharge of 3.8% has been applied to line 001.

LOI BN-Q-SJB (A1)

Page 2 of 2 Pages

Figure C5.F10. Instructions for Preparing a Letter of Intent (LOI) Amendment

| Instruction for Preparing a Letter of Intent (LOI) Amendment | |
|---|---|
| 1. <u>Description</u> . | The “This LOI Amendment” paragraph includes a concise and clear purpose of the Amendment. |
| 2. <u>LOI Acceptance Date</u> . | Include “Basic LOI accepted [insert date].” |
| 3. <u>DSCA Congressional Notification Transmittal Number</u> . | Include the DSCA transmittal number used in the statutory Congressional notification (e.g., Congressional Notification 92-15) when applicable. When multiple notification numbers apply, they must all be listed. |
| 4. <u>Estimated Payment Schedule</u> . | The “Due with Amendment Acceptance” block should include the amount needed until a payment can be made. The payment schedule should be adjusted accordingly. |
| 5. <u>Other Fields</u> . | Quantity, notes, codes, and financial fields should be changed to reflect the previous and revised values. |

C5.6. CONGRESSIONAL NOTIFICATION

C5.6.1. Definition and Purpose. By law, a numbered certification must be submitted to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate before LOA documents which meet specific criteria may be offered to foreign purchasers. Congress reviews each such proposed sale and may prohibit the transfer by enacting a joint resolution before the end of the prescribed review period. If Congress does not enact a joint resolution, the LOA document can be offered when the review period expires.

C5.6.2. Legal References. Table C5.T10. summarizes the Congressional Notification legal references.

Table C5.T10. Congressional Notification Legislation

| Legislation | Subject |
|--|--|
| Arms Export Control Act (AECA), Section 36(b)(1) (reference (c)) | Notification Criteria/Content/Classification |
| AECA, Section 36(b)(5)(A) (reference (c)) | Sensitivity of Technology Enhancement/Upgrade – Report |
| AECA, Section 36(b)(5)(C) (reference (c)) | Sensitivity of Technology Enhancement/Upgrade - New Notification |
| AECA, Section 36(e) (reference (c)) | Offset Arrangements |
| AECA, Section 36(f) (reference (c)) | Federal Register Publication |
| FAA, Section 620C(d) (reference (b)) | Sales to Greece or Turkey |
| Executive Order (E.O.) 11958 (reference (e)) | Delegates responsibility to the Secretary of Defense |
| Foreign Assistance Appropriation (Issued Annually – Sections Vary) | Program Content Notifications |

C5.6.3. When is Congressional Notification Required? Table C5.T11. identifies the Congressional Notification criteria and requirements. The DoS must provide clearance to DSCA prior to DSCA forwarding to Congress the statutory 15, 30, or 45 day notification and/or the Advance Notification (20-day review period prior to the 30-calendar day statutory review period) required for countries other than NATO, any NATO member country, Australia, Japan, and New Zealand.

Table C5.T11. Congressional Notification Criteria and Requirements

| Type of Equipment | Dollar Value | Document | Notification or Report Required? | Timing of Notification | Notification Period | Reference |
|--|--|------------|----------------------------------|----------------------------------|--|------------------------|
| Major Defense Equipment (MDE) for Members of NATO, Australia, Japan, and New Zealand | Less than \$25M | LOA or LOI | None | N/A | N/A | N/A |
| MDE for all other purchasers and NATO organizations | Less than \$14M | LOA or LOI | None | N/A | N/A | N/A |
| MDE for Members of NATO, Australia, Japan, and New Zealand | \$25M or greater | LOA or LOI | Notification | Must be completed prior to offer | 15 calendar days | AECA, Section 36(b)(1) |
| MDE for all other purchasers and NATO organizations | \$14M or greater | LOA or LOI | Notification | Must be completed prior to offer | 15 calendar days for NATO organizations ----- All other purchasers – 30 calendar days (plus 20 calendar days advance notification) | AECA, Section 36(b)(1) |
| MDE for Members of NATO, Australia, Japan, and New Zealand | Changes to MDE values that bring total MDE up to \$25M threshold | Amendment | Notification | Must be completed prior to offer | 15 calendar days | AECA, Section 36(b)(1) |
| MDE for all other purchasers and NATO organizations | Changes to MDE values that bring total MDE up to \$14M threshold | Amendment | Notification | Must be completed prior to offer | 15 calendar days for NATO organizations ----- All other purchasers – 30 calendar days (plus 20 calendar days advance notification) | AECA, Section 36(b)(1) |

| Type of Equipment | Dollar Value | Document | Notification or Report Required? | Timing of Notification | Notification Period | Reference |
|---|---|------------|--|----------------------------------|--|------------------------|
| Defense Articles (Non-MDE) or Services for Members of NATO, Australia, Japan, and New Zealand | Less than \$100M | LOA or LOI | None | N/A | N/A | N/A |
| Defense Articles (Non-MDE) or Services for all other purchasers and NATO organizations | Less than \$50M | LOA or LOI | None | N/A | N/A | N/A |
| Defense Articles (Non-MDE) or Services for Members of NATO, Australia, Japan, and New Zealand | \$100M or greater | LOA or LOI | Notification | Must be completed prior to offer | 15 calendar days | AECA, Section 36(b)(1) |
| Defense Articles (Non-MDE) or Services for all other purchasers and NATO organizations | \$50M or greater | LOA or LOI | Notification | Must be completed prior to offer | 15 calendar days for NATO organizations ----- All other purchasers – 30 calendar days (plus 20 calendar days advance notification) | AECA, Section 36(b)(1) |
| Defense Articles (Non-MDE) or Services for Members of NATO, Australia, Japan, and New Zealand | Changes to the case value that bring the total value up to \$100M threshold | Amendment | Notification (Determined on a case-by-case basis.) | Must be completed prior to offer | 15 calendar days | AECA, Section 36(b)(1) |
| Defense Articles (Non-MDE) or Services for all other purchasers and NATO organizations | Changes to the case value that bring the total value up to \$50M threshold | Amendment | Notification (Determined on a case-by-case basis.) | Must be completed prior to offer | 15 calendar days for NATO organizations ----- All other purchasers – 30 calendar days (plus 20 calendar days advance notification) | AECA, Section 36(b)(1) |
| MDE, Non-MDE, Services, or Design and Construction | Any value | P&A | None | N/A | N/A | N/A |

| Type of Equipment | Dollar Value | Document | Notification or Report Required? | Timing of Notification | Notification Period | Reference |
|--|--|------------|----------------------------------|----------------------------------|--|------------------------|
| Design and Construction for Members of NATO, Australia, Japan, and New Zealand | Less than \$300M | LOA or LOI | None | N/A | N/A | N/A |
| Design and Construction for all other purchasers and NATO organizations | Less than \$200M | LOA or LOI | None | N/A | N/A | N/A |
| Design and Construction for Members of NATO, Australia, Japan, and New Zealand | \$300M or greater | LOA or LOI | Notification | Must be completed prior to offer | 15 calendar days | AECA, Section 36(b)(1) |
| Design and Construction for all other purchasers and NATO organizations | \$200M or greater | LOA or LOI | Notification | Must be completed prior to offer | 15 calendar days for NATO organizations ----- All other purchasers – 30 calendar days (plus 20 calendar days advance notification) | AECA, Section 36(b)(1) |
| Design and Construction for Members of NATO, Australia, Japan, and New Zealand | Changes to the design and construction costs that bring the total value up to \$300M threshold | Amendment | Notification | Must be completed prior to offer | 15 calendar days | AECA, Section 36(b)(1) |
| Design and Construction for all other purchasers and NATO organizations | Changes to the design and construction costs that bring the total value up to \$200M threshold | Amendment | Notification | Must be completed prior to offer | 15 calendar days for NATO organizations ----- All other purchasers – 30 calendar days (plus 20 calendar days advance notification) | AECA, Section 36(b)(1) |

| Type of Equipment | Dollar Value | Document | Notification or Report Required? | Timing of Notification | Notification Period | Reference |
|---|--|------------------------|----------------------------------|---|--|--------------------------|
| Enhancements or upgrades in sensitivity of technology and/or capability | Enhancements to equipment that has been previously notified, has not yet been delivered and is BELOW the section 36(b)(1) financial thresholds | LOA, LOI, or Amendment | Report | Must be completed prior to delivery of the defense articles or the furnishing of services | 45 calendar days | AECA Section 36(b)(5)(A) |
| Enhancements or upgrades in sensitivity of technology and/or capability | Enhancements to equipment that has been previously notified, has not yet been delivered and EXCEEDS the section 36(b)(1) financial thresholds | LOA, LOI, or Amendment | Notification | Must be completed prior to offering the LOA, LOI, or Amendment | 15 calendar days for NATO, any NATO member country, Japan, Australia and New Zealand ----- All other purchasers – 30 calendar days | AECA Section 36(b)(5)(C) |
| Transfers to Greece or Turkey | NATO Member Country 36(b) thresholds | LOA, LOI, or Amendment | Certification | Must be completed prior to offering the LOA, LOI, or Amendment | 15 calendar days | FAA Section 620C(d) |

C5.6.4. Classification of AECA, Section 36(b)(1) Congressional Notifications. All data pertaining to Congressional Notifications (advance and statutory) of proposed sales are classified until the statutory notification is provided to Congress. The following classification guidelines apply:

C5.6.4.1. Otherwise Unclassified Data. If none of the data are classified, the documents are marked CONFIDENTIAL with all paragraphs preceded by (U). The bottom of the first page of each submittal shows:

C5.6.4.1.1. "Classified By SAMM (DoD 5105.38-M) (Chapter 5). Declassify On Statutory Notification To Congress Unless Required Otherwise By Competent Authority."

C5.6.4.2. Classified Data. If any data are classified, the documents are marked with the required level of classification. Each paragraph is marked with the required classification level and the "classified by" and "declassify on" data are shown. The Offset Certificate remains classified (see paragraph C5.6.5.5.).

C5.6.5. Information Included in Congressional Notifications

C5.6.5.1. Implementing Agency Submissions. Figures C5.F11. through C5.F14. show the data the Implementing Agencies must submit to support AECA, section 36(b)(1) (reference (c)) notifications.

C5.6.5.2. Cost Estimates. Rough Order of Magnitude (ROM) cost estimates, as well as generic descriptions of the proposed sales elements are acceptable for processing Congressional Notifications. For notification purposes, proposed sales should be developed for the maximum reasonable program scope and value.

C5.6.5.3. Sensitivity Of Technology. AECA, section 36(b)(1) (reference (c)) requires that Congressional Notifications for MDE contain a Sensitivity of Technology statement, classified if necessary, identifying the extent of the sensitive technology and classified information, and a justification for the sale in view of the technology sensitivity.

C5.6.5.3.1. Sensitivity of Technology refers to the detrimental effect on national security interests of the United States that could be caused by unauthorized disclosure or diversion of defense equipment, technical data, training, services, or documentation transferred in connection with a proposed sale. This includes special tooling and/or manufacturing equipment that is sold in connection with a coproduction and/or co-assembly program.

C5.6.5.3.2. The Sensitivity of Technology statement must address both unclassified and classified sensitive technological information and any restricted information contained in classified components or documentation, which could be transferred by the sale. The Sensitivity of Technology information should NOT address the risk associated with unauthorized disclosure or diversion (covered by National Disclosure Policy (NDP-1) procedures and USD(AT&L) review) or the foreign policy implications of unauthorized use by the proposed recipient. Figure C5.F12. contains a sample format for this information.

C5.6.5.4. Military Justification. Figure C5.F13. provides a sample format for this information.

C5.6.5.5. Offsets. In accordance with 50 U.S.C. App. 2411(c) (reference (ax)) and AECA, section 36(g) (reference (c)), each notification shall indicate if an offset agreement is proposed in connection with the sale. If so, an Offset Certificate, which is treated as confidential information, must be included. This certificate should be marked “CONFIDENTIAL” and remains classified even after the statutory notification is made. Figure C5.F14. provides a sample format for this information.

Figure C5.F11. Advance and/or Statutory Notification Data

(CLASSIFICATION)

MEMORANDUM FOR (or LETTER TO) DSCA (Attention: Business Operations Directorate) (U)

SUBJECT: Data for a Possible Advance/Statutory AECA, section 36(b)(1) Notification (U)

(*) The following supporting data are provided in accordance with DoD 5105.38M:

- a. (*) Prospective Purchaser:
- b. (*) Purchaser's reference and date of the Letter of Request (LOR):
(Attach a copy of the country's LOR (submit to DSCA within 10 days of the LOR))
- c. (*) Date purchaser's LOR received by MILDEP:
- d. (*) MDE/Non-MDE:
 - (1) Quantity, description and total dollar value of all MDE under consideration for sale. (Include funding for Long Lead Items (LLI) if applicable.)
 - (2) Description of non-MDE articles and services under consideration for sale. Generic descriptions/categories such as support equipment, communications equipment, ammunition, personnel training, spare and repair parts, facility design, publications, training equipment etc. should be used whenever possible in describing the non-MDE articles and services.
- e. (*) Estimated total dollar value of all LOAs for this program. (Include packing, crating, handling, transportation, administrative charges, etc.) One or several LOAs can implement a program.
- f. (*) Is the current section 36(b)(1) notification data an integral part of a larger planned country program which will also require Congressional Notification(s)? If YES, provide a brief description of the balance of the foreign country's program plan to include future plans for procurement of weapon systems, training, construction, logistics support, U.S. Government and/or contractor engineering and/or technical services, etc.
- g. (*) Estimated value of foreign country's total program (include the current Congressional Notification cost estimate) as well as program duration.
- h. (*) Identify if this is a first time buy of the MDE item(s) being proposed in this notification. If yes, identify countries in the region that have these items. If no, provide the data in paragraph i.
- i. (*) Identify prior related cases, if any, by providing FMS case designators, case dollar values, country acceptance dates, version and quantity of the MDE item(s), delivery date or expected delivery date, and brief case description including the Congressional Transmittal Notification number.
- j. (*) Security classification level of the sale after statutory notification. If the sale is classified, attach justification citing a description of the damage to U.S. national security that could be expected to result from disclosure of the information.
- k. (*) Security classification level of the LOA(s) after statutory notification. If the LOA(s) is classified, attach justification citing rationale as above.
- l. (*) The DoD Component:

Figure C5.F11. Advance and/or Statutory Notification Data (continued)

- m. (*) Case Designator: Provide lead tracking case designator and other associated case designators as necessary.
- n. (*) A description of each payment, contribution, gift, commission or fee paid or offered or agreed to be paid in order to solicit, promote or otherwise to secure such LOA. Include:
- (1) Name of person who made such payment, contribution, gift, commission, or fee.
 - (2) The name of any sales agent or other person to whom such payment, contribution, gift, commission, or fee was paid.
 - (3) The date and amount of such payment, contribution, gift, commission, or fee.
 - (4) A description of the sale in connection with which such payment, contribution, gift, commission, or fee was paid.
 - (5) The identification of any business information considered confidential by the person submitting the information under the AECA, section 39 to the Secretary of State.
- o. (*) Is equipment for sale or transfer from new production or U.S. Government inventory?
- p. (*) If equipment to be sold is from U.S. Government inventory, will reimbursements be adequate to cover the full replacement costs of those items sold or transferred at the time of replenishment to U.S. Government inventories? YES/NO
- q. (*) If reimbursements are inadequate, provide reason(s) for disparity and impact on procurement for replacement materiel.
- r. (*) Sensitivity of technology contained in the defense articles or services proposed for sale:
- (1) When a proposed sale involves NO transfer of sensitive technology or classified information, the word "NONE" shall be entered under this heading.
 - (2) When the transfer of sensitive technology or classified information is involved, the words "See Attachment No.____" will be entered under this heading and the data specified by Figure C5.F12. will be provided as an attachment.
- s. (*) Military Justification: See Attachment No.:____. Refer to Figure C5.F13. for required form and content.
- t. (*) Are there any offset agreements? YES/NO If yes, see Figure C5.F14. for required data and format. The description should indicate whether or not a known offset requirement exists, whether the country has a standard offset requirement, and whether offsets provided will be direct or indirect and the estimated percentage of each. If there is no offset agreement at the time of the notification, that should be so stated.
- u. (*) Provide Action Officer's name, organization, and telephone number (specifying area code and commercial number as well as DSN number).

*If the sale is classified, attach justification. Mark each paragraph with appropriate security classification level in accordance with classification guidelines and identify the classifying authority and declassification date.

(CLASSIFICATION)

Figure C5.F12. Sensitivity of Technology Statement

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| <p style="text-align: center;">(CLASSIFICATION)</p> <p style="text-align: center;">SENSITIVITY OF TECHNOLOGY</p> <ol style="list-style-type: none"> 1. (*) Identification and security classification of classified equipment, major components, subsystems, software, technical data (performance, maintenance, operational, R&M, etc.), documentation, training devices and services to be conveyed with the proposed sale. 2. (*) Identification and security classification of sensitive technological information and/or restricted information contained in the equipment, major components, subsystems, software, technical data (performance, maintenance, R&M, etc.) documentation, training devices and services to be conveyed with the proposed sale. Also, provide a brief justification/explanation of why the information is sensitive. 3. (*) Briefly describe the possible consequences if the hardware, publications, software, etc. are lost to a technologically advanced or competent adversary. <p>When the release of classified information or sensitive technology is within the classification guidelines for disclosure to a foreign Government as stipulated in National Disclosure Policy (NDP-1), the following information appears as the last two paragraphs:</p> <ol style="list-style-type: none"> 4. (*) A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. 5. (*) Release of this technology is within the disclosure authority delegated for [insert recipient country] as stipulated in the National Disclosure Policy (NDP-1). This paragraph is always classified. <p>When an exception to the NDP-1 is granted to a foreign Government for release of classified information or sensitive technology relating to the current or a previous sale/transfer of specific MDE, defense articles or services, or design services, the following information appears as the last two paragraphs:</p> <ol style="list-style-type: none"> 4. (*) This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons. 5. (*) An exception to the National Disclosure Policy (NDP-1) was granted for [insert recipient country] for the release of [insert classification] information pertaining to (description) under Record of Action Number [insert number] dated [insert date]. This paragraph is always classified. <p>*Mark each paragraph with the appropriate security classification level and identify the classifying authority and declassification date.</p> <p style="text-align: center;">(CLASSIFICATION)</p> |
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Figure C5.F13. Military Justification Data

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| <p>(CLASSIFICATION)</p> <p>MILITARY JUSTIFICATION</p> <p>1. (*) Identify all defense articles and/or services proposed for sale and the estimated total cost of the offer to be made to the prospective purchaser.</p> <p>2. (*) Describe how the proposed sale will enhance the foreign policy and national security objectives of the United States. Give reasons why the sale is in the national security interests of the United States.</p> <p>3. (*) Describe the impact of the proposed sale on regional foreign policy and military developments.</p> <p>4. (*) A short paragraph answering:</p> <ul style="list-style-type: none">(a) Why the prospective purchaser needs these defense articles and/or services?(b) How the defense articles and services will be used and the resulting effect on the purchaser's military capability?(c) Ability of the prospective purchaser to absorb and use the defense articles and/or services.(d) Was the sale due, in part, to the results of a U.S. survey? <p>5. (*) Estimate the number of U.S. Government and contractor representatives (include length of time in-country involved in the sale).</p> <p>6. (*) Name of each contractor involved in the sale (include the name of the contractor(s), city and state).</p> <p>7. (*) Are there any proposed offset agreements for the sale? If yes, attach a classified Offset Certificate.</p> <p>*Mark each paragraph with appropriate security classification level in accordance with classification guidelines and identify the classifying authority and declassification date.</p> <p>(CLASSIFICATION)</p> |
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Figure C5.F14. Offset Certificate

(CLASSIFICATION)

OFFSET CERTIFICATE

(*) Reporting of offset agreements in accordance with section 36(b)(1) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is provided below:

General description of the performance required for the offset agreement. This description should indicate whether or not a known offset requirement exists, whether the country has a standard offset requirement, and whether offsets provided will be direct or indirect and the estimated percentage of each. If there is no offset agreement at the time of the notification, that should be so stated.

Section 36(g) of the AECA (22 U.S.C. 2776) requires this information to be treated as "CONFIDENTIAL INFORMATION" in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). This information is exempt from disclosure under 5 U.S.C. 552, and shall not be published or disclosed without a determination that withholding is contrary to the national interest.

*Mark each paragraph with appropriate security classification level in accordance with classification guidelines and identify the classifying authority and declassification date.

Prepared by: USD(P)/DSCA (Business Operations Directorate), Date: _____

(CLASSIFICATION)

C5.6.5.6. Committee Requests. In accordance with AECA, section 36(b)(1) (reference (c)), Congressional committees may request the following information be submitted with any notification:

C5.6.5.6.1. A detailed description of the defense articles and/or services, or design and construction services offered, including a description of the article's capabilities;

C5.6.5.6.2. An estimate of the number of officers and employees of the USG and of U.S. civilian contract personnel needed in-country to carry out the proposed sale;

C5.6.5.6.3. The names of contractors expected to provide the defense articles and/or services, or design and construction services and a description of any proposed offset agreements;

C5.6.5.6.4. An evaluation, prepared by the Secretary of State in consultation with the Secretary of Defense and the Director of Central Intelligence, of the manner, if any, in which the proposed sale would:

C5.6.5.6.4.1. Contribute to an arms race;

C5.6.5.6.4.2. Support international terrorism;

C5.6.5.6.4.3. Increase the possibility of an outbreak or escalation of conflict;

C5.6.5.6.4.4. Prejudice the negotiation of any arms controls; or

C5.6.5.6.4.5. Adversely affect the arms control policy of the United States;

C5.6.5.6.5. The reasons why the foreign country or international organization needs the defense articles and/or services, or design and construction services; and how the country or organization intends to use the defense articles and/or services, or design and construction services;

C5.6.5.6.6. An analysis by the President of the impact of the sale on the military stocks and the military preparedness of the United States;

C5.6.5.6.7. The reasons why the sale is in the national interest of the United States;

C5.6.5.6.8. An analysis by the President of the impact of the sale on the military capabilities of the foreign country or international organization;

C5.6.5.6.9. An analysis by the President of how the sale would affect the relative military strengths of countries in the region and whether other countries in the region have comparable kinds and amounts of defense articles and/or services, or design and construction services;

C5.6.5.6.10. An estimate of the levels of trained personnel and maintenance facilities of the foreign country or international organization which are needed and available to effectively utilize the defense articles and/or services, or design and construction services;

C5.6.5.6.11. An analysis of the extent to which comparable kinds and amounts of defense articles and/or services, or design and construction services are available from other countries;

C5.6.5.6.12. An analysis of the impact of the sale on U.S. relations with other countries in the same region;

C5.6.5.6.13. For any agreement proposed to be entered into by the United States for the purchase by the United States of equipment or services of the foreign country or international organization in connection with, or as consideration for, such LOA, a detailed description of the agreement including an analysis of the impact upon U.S. business concerns which might otherwise have provided such equipment to the United States; an estimate of the costs to be incurred by the United States compared with costs which would otherwise have been incurred; an estimate of the economic impact and unemployment which would result; and an analysis of whether such costs and domestic economic impact justify entering into the agreement;

C5.6.5.6.14. The projected delivery dates of the defense articles and/or services, or design and construction services;

C5.6.5.6.15. A detailed description of weapons and levels of munitions that may be required as support for the sale; and

C5.6.5.6.16. An analysis of the relationship of the proposed sale to projected procurements of the same item.

C5.6.6. Responsibilities for Congressional Notification. Under E.O. 11958 (reference (e)), the President has delegated the responsibility of implementing AECA, section 36(b) (reference (c)) to the Secretary of Defense in consultation with the Secretary of State. Congressional Notification responsibilities are summarized in Table C5.T12.

Table C5.T12. Congressional Notification Responsibilities

| Organization | Responsibility |
|----------------------------------|--|
| Congress | Initiates committee requests |
| DoS | Consults with the Department of Defense on Congressional Notifications Prepares FAA, section 620 (reference (b)) certifications on Greece and Turkey Evaluates proposed sale regarding support for foreign policy goals, regional stability, consistency with international agreements, and arms control initiatives |
| DSCA | Prepares and submits Congressional Notifications and Reports after DoS clearance Develops the Sensitivity of Technology Statement |
| MILDEP/ Implementing Agencies | Provides necessary data to DSCA |

C5.6.7. Congressional Notification Process

C5.6.7.1. Processing AECA, Section 36(b)(1) Notifications

C5.6.7.1.1. Implementing Agencies Prepare Data. Within 10 days of receipt of a valid LOR that meets the Table C5.T11. criteria, the Implementing Agency prepares and submits the data required for a Congressional Notification to DSCA (Business Operations Directorate). (See Figures C5.F11. through C5.F14.)

C5.6.7.1.2. DSCA Prepares Notification. Upon receipt of the data, DSCA prepares the required notification documents, coordinates with the DoS, and submits the notification to Congress. DSCA assigns a DSCA Transmittal Number on each statutory notification, which identifies the year and sequential number of the transmittal (e.g. 03-30). This number must be included on the LOA and all subsequent Amendments and Modifications. When the notification is submitted to Congress, DSCA provides the DSCA Transmittal number and a copy of the Congressional transmittal letter(s) to the Implementing Agency. After receipt of the transmittal number, the Implementing Agency can provide a draft LOA to the Purchaser.

C5.6.7.1.3. Expedited Processing. In the event of circumstances which require expedited processing of a notification (e.g. the need to exercise contract options by a specific date, termination of a current production program, etc.), the Implementing Agency should provide justification in the cover memorandum to the AECA, section 36(b)(1) (reference (c)) submission to DSCA so that the DoS and other coordinating agencies are aware of the notification urgency.

C5.6.7.1.4. Program Issues Impacting Sales. The Implementing Agency must advise DSCA (Business Operations and Operations Directorates) of program difficulties or changes that impact or constrain the potential sale. For example, domestic program budget cuts, projected termination of domestic production contracts, unfavorable test and evaluation results, or program cost increases could have a detrimental effect on a potential sale and affect the Congressional Notification process.

C5.6.7.1.5. After Expiration. Upon expiration of the statutory 15 or 30 day review period and provided that Congress has not enacted a joint resolution objecting to the proposed sale, the LOA document may be coordinated, countersigned, and offered to the purchaser. AECA, section 36(f) (reference (c)) requires the publication of the full-unclassified text of each numbered certification submitted pursuant to subsection (b) and each notification of a proposed commercial sale submitted under subsection (c). DSCA posts information regarding major arms sales notifications to Congress on its web page.

C5.6.7.1.6. Period of Validity. A Congressional Notification that has not resulted in any accepted LOA(s) by a foreign Government remains a valid notification against which LOAs may be accepted and implemented for a period not to exceed 5 years.

C5.6.7.1.7. When Congress Objects. If Congress adopts a joint resolution objecting to a proposed sale, DSCA shall notify the Implementing Agency and the LOA is NOT offered to the prospective purchaser.

C5.6.7.1.8. Emergency Circumstances. If the President states in the AECA, section 36(b)(1) (reference (c)) certification that an emergency exists that requires the proposed sale in the U.S. national security interest, the Congressional review requirements are waived and the LOA is offered before the 15 and/or 30-day notification period has expired. The President must provide a detailed justification for his or her determination, a description of the emergency circumstances that necessitate the immediate issuance of the LOA, and the national security interests involved.

C5.6.7.2. Processing Section 36(b)(5)(A) Reports. Figure C5.F15. illustrates the data submitted by the Implementing Agencies to support AECA, section 36(b)(5)(A) (reference (c)) reports for applicable sales. The section 36(b)(5)(A) report is required for 10 years after the original Congressional Notification unless deliveries are completed sooner. The Implementing Agencies should consolidate all upgrades resulting in improved and/or enhanced capabilities and provide these reports as a package submission to DSCA (Business Operations Directorate).

Figure C5.F15. Enhancement or Upgrade of Sensitivity of Technology of Items Planned to be Delivered, AECA, Section 36(b)(5)(A) Report

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| (CLASSIFICATION) |
| <p>MEMORANDUM FOR (or LETTER TO) DSCA (Attention: Business Operations Directorate (U))</p> <p>SUBJECT: Enhancement or Upgrade of Sensitivity of Technology Item(s) Planned to be Delivered, AECA, Section 36(b)(5)(A) Report (U)</p> <p>1. (*) The following supporting data are provided in accordance with DoD 5105.38-M:</p> <ul style="list-style-type: none"> a. (*) Prospective Purchaser: b. (*) Purchaser's reference and date of LOR request: Attach a copy of the country's LOR (submit to DSCA within ten days of the LOR). c. (*) DoD Component: d. (*) Case Designator: e. (*) AECA, section 36(b)(1) Certification Number: <p>2. (*) Description of the manner, in which the technology or capability has been enhanced or upgraded, including the significance of such enhancement or upgrade from the level previously described in the original AECA, section 36(b)(1) Certification:</p> <ul style="list-style-type: none"> a. (*) Estimated net cost of enhancement or upgrade: b. (*) Quantity and item(s) or service(s) to which change(s) apply (indicate whether MDE): c. (*) Next planned delivery date of item(s) or service(s): d. (*) Detailed justification for the sale of such enhancement or upgrade: <p>3. (*) Action officer's name, organization, and telephone number.</p> <p>Attachment: Copy of original AECA, section 36(b)(1) Notification</p> <p>*If the sale is classified, attach justification. Mark each paragraph with appropriate security classification level in accordance with classification guidelines and identify the classifying authority and declassification date.</p> <p style="text-align: center;">(CLASSIFICATION)</p> |

C5.6.7.3. Processing Section 36(b)(5)(C) Enhancement Notifications. Figure C5.F16. illustrates the data submitted by the Implementing Agencies to support AECA, section 36(b)(5)(C) (reference (c)) notifications for applicable sales. The Implementing Agencies should consolidate all upgrades resulting in improved and/or enhanced mission capabilities and provide these reports as a package submission to DSCA (Business Operations Directorate).

Figure C5.F16. Statutory Notification Data On Enhancement, Upgrade of Capability, or Sensitivity of Technology, AECA, Section 36(b)(5)(C) Report

(CLASSIFICATION)

MEMORANDUM FOR (or LETTER TO) DSCA (Attention: Business Operations Directorate (U))

SUBJECT: Data for Statutory AECA, Section 36(b)(1) AECA Notification of Enhancement, Upgrade of Capability, or Sensitivity of Technology, AECA, Section 36(b)(5)(C) Report (U)

1. (*) The following supporting data are provided in accordance with DoD 5105.38-M:
 - a. (*) Prospective Purchaser:
 - b. (*) Purchaser's reference and date of LOR:
Attach a copy of the country's LOR (submit to DSCA within ten days of the LOR).
 - c. (*) DoD Component:
 - d. (*) Case Designator:
 - e. (*) AECA, section 36(b)(1) Certification Number:
 2. (*) Description of the manner in which the technology or capability has been enhanced or upgraded, including the significance of such enhancement or upgrade from the level previously described in the original section 36(b)(1) Certification:
 - a. (*) Estimated net cost of enhancement or upgrade:
 - b. (*) Quantity and item(s) or service(s) to which change(s) apply (indicate whether MDE):
 - c. (*) Next planned delivery date of item(s) or service(s):
 - d. (*) Detailed justification for the sale of such enhancement or upgrade:
 - f. (*) Military Justification: See Attachment No.: ____ (Figure C5.F13.)
 - f. (*) Sensitivity of technology contained in the defense articles or defense services proposed for sale (Figure C5.F12.):
 - g. (*) Are there any offset agreements? YES/NO If yes, see Attachment No. __ (Figure C5.F14.)
 3. (*) Action officer's name, organization, and telephone number:
Attachment: Copy of original AECA, section 36(b)(1) Notification
- *If the sale is classified, attach justification. Mark each paragraph with appropriate security classification level in accordance with classification guidelines and identify the classifying authority and declassification date.

(CLASSIFICATION)